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In The
Supreme Court of The United States

OCTOBER TERM, A.D. 1969

NO. [redacted]

PUEBLO DE ISLETA, PETITIONER,
v.
THE UNITED STATES, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO COURT OF CLAIMS

OF COUNSEL:
Dudley Cornell
Mark J. Clayburgh

ARTHUR T. HANNETT
First National Bank Building
Albuquerque, New Mexico
Attorney for Petitioner

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v.

THE UNITED STATES, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO COURT OF CLAIMS

To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

This is a petition by claimant for a Writ of Certiorari to review a judgment of the United States Court of Claims rendered in the above entitled cause on the tenth day of March, 1961, with respect only to the First Cause of Action contained therein.

I. SUMMARY AND SHORT STATEMENT OF MATTERS INVOLVED.

This is an action brought before the Indian Claims Commission under the provisions of the Act of August 13, 1946 (60 Stat. 1050) by the Pueblo de Isleta, Petitioner, against the United States on August 7, 1951, asking for just and fair

compensation for the loss of a tract of land known as the Peralta Tract, consisting of 14,780.745 acres. An adverse opinion was rendered by the Indian Claims Commission on June 5, 1959, and petitioner appealed to the United States Court of Claims on September 2, 1959. The Court of Claims entered an order on the 10th day of March, 1961, affirming the decision of the Indian Claims Commission, and it is this order which Petitioner seeks to have reviewed by Writ of Certiorari.

The Peralta Tract is a portion of a larger tract of land lying South of the Isleta Pueblo Grant, and known as the Lo de Padilla Grant. This grant was purchased by the Pueblo from the then legal owners on February 4, 1750. On or about January 27, 1896, the Pueblo de Isleta filed a Petition in the Court of Private Land Claims seeking confirmation to its title to the Lo de Padilla Grant. On November 28, 1896, the court entered a final decree confirming title in the Pueblo, and a Patent was issued by the United States to the Pueblo de Isleta on April 9, 1908, covering the entire Grant as purchased by the Pueblo. (Opinion of Indian Claims Commission, 7 Ind. Cl. Com. p. 649 attached in appendix herein)

The Pueblo Lands Board was established by Act of Congress of June 7, 1924 (43 Stat. 636) for the purpose of investigating and reporting upon all lands in dispute in the Pueblo Grants, or lands purchased by the Pueblos. At that time a part of the Lo de Padilla Grant was in the possession of non-Indians, and it is the contention of Petitioner that the Pueblo Lands Board was required by the Act of June 7, 1924, to separately report with respect to each individual

tract in dispute. The Board made an appraisal of the fair market value of such lands and water rights in the sum of $284,132.56 (Opinion of Indian Claims Commission, appendix), but instead of holding hearings and reporting on the titles, the Board adopted a short cut and negotiated a settlement under which the Pueblo executed a Quitclaim Deed to the 14,710.85 acres without receiving any award of compensation by the Board. Lengthy history of these grants, and reference to a District Court case in Valencia County, New Mexico, is omitted from this brief statement. It is admitted that the boundaries of a deed made by Pueblo in 1797 were not capable of being fully identified, and continuing controversy prevailed between the Pueblo and the claimants until the time of the Pueblo Lands Board.

Petitioner alleges the Exchange Quitclaim Deed dated May 1, 1928, was void for the reason that it did not receive the approval of the Secretary of Interior as required by the Act of June 7, 1924. Petitioner further alleges that the execution of the Deed did not terminate the obligation for the Pueblo Lands Board to make an award for the loss of the lands.

Reports filed by the House and Senate Committee on Indian Affairs stated that the Board was in error in holding that this tract could not have been recovered by seasonable prosecution for the Indians. (Indian Claims Commission Opinion, appendix) and Congress subsequently appropriated $2.00 an acre compensation for the loss of this tract by Act of May 31, 1933 (48 Stat. 108). Petitioner admits that the amount of $29,421.70 paid to the Pueblo for this award should be offset against any judgment for the fair market

value of the lands which was $284,132.56 at the time of the Pueblo Lands Board appraisal.

II. JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under the provisions of Section 705 of Title 25 of the United States Code which reads as follows:

> "Determinations of questions of law by the Court of Claims under this section shall be subject to review by the Supreme Court of the United States in the manner prescribed by section 288 of Title 28."

III. RELEVANT PARTS OF STATUTES INVOLVED.

1. The present case was filed pursuant to the Act of August 13, 1946, 60 Stat. 60, appearing in Title 25 of the United States Code as Section 70 et seq:

> "70. CREATION OF COMMISSION
>
> There is created and established an Indian Claims Commission, referred to in this chapter as the Commission.
>
> "70a. Jurisdiction; claims considered; offsets and counterclaims
>
> The Commission shall hear and determine the following claims against the United States on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska: (1) claims in law or equity arising under the Constitution, laws, treaties of the United States, and Executive orders of the President; (2) all other claims in law or equity, including those sounding in tort, with respect to which the claimant would have been entitled to sue in a court of the United States if the United States was subject to suit; (3) claims which

would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake, whether of law or fact, or any other ground cognizable by a court of equity; (4) claims arising from the taking by the United States, whether as the result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant; and (5) claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity. No claim accruing after August 13, 1946, shall be considered by the Commission.

All claims under this chapter may be heard and determined by the Commission nothwithstanding any statute of limitations or laches, but all other defenses shall be available to the United States."

2. Relevant parts of the Pueblo Lands Board Act of June 7, 1924, 45 Stat. 636, 25 U.S.C. Sec. 331, are as follows:

"That in order to quiet title to various lots, parcels, and tracts of land in the State of New Mexico for which claim shall be made by or on behalf of the Pueblo Indians of said State as hereinafter provided, the United States of America, in its sovereign capacity as guardian of said Pueblo Indians shall by its Attorney General file in the District Court of the United States for the District of New Mexico, its bill or bills of complaint with a prayer for discovery of the nature of any claim

or claims of any kind whatsoever adverse to the claim of said Pueblo Indians, as hereinafter determined.

"2. That there shall be, and hereby is established a board to be known as "Pueblo Lands Board" to consist of the Secretary of the Interior, the Attorney General, each of whom may act through an assistant in all hearings, investigations, and deliberations in New Mexico, and a third member to be appointed by the President of the United States. The board shall be provided with suitable quarters in the city of Santa Fe, New Mexico, and shall have power to require the presence of witnesses and the production of documents by subpoena, to employ a clerk who shall be empowered to administer oaths and take acknowledgments, shall employ such clerical assistance, interpreters, and stenographers with such compensation as the Attorney General shall deem adequate, and it shall be provided with such necessary supplies and equipment as it may require on requisitions to the Department of Justice. The compensation and allowance for travel and expenses of the member appointed by the President shall be fixed by the Attorney General.

"It shall be the duty of said board to investigate, determine, and report and set forth by metes and bounds, illustrated where necessary by field notes and plats, the lands within the exterior boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico by any authority of the United States of America, or any prior sovereignty, or acquired by said Indians as a community by purchase or otherwise, title

to which the said board shall find not to have been extinguished in accordance with the provisions of this Act, and the board shall not include in their report any claims of non-Indian claimants who, in the opinion of said board after investigation, hold and occupy such claims of which they have had adverse possession, in accordance with the provisions of section 4 of this Act: Provided, however, That the board shall be unanimous in all decisions whereby it shall be determined that the Indian title has been extinguished.

"The board shall report upon each pueblo as a separate unit and upon the completion of each report one copy shall be filed with the United States District Court for the District of New Mexico, one with the Attorney General of the United States, one with the Secretary of the Interior, and one with the Board of Indian Commissioners.

"3 That upon the filing of each report by the said board, the Attorney General shall forthwith cause to be filed in the United States District Court for the District of New Mexico, as provided in section 1 of this Act, a suit to quiet title to the lands described in said report as Indian lands the Indian title to which is determined by said report not to have been extinguished.

"4. That all persons claiming title to, or ownership of, any lands involved in any such suit, or suits, may in addition to any other legal or equitable defenses which they may have or have had under the laws of the Territory and State of New Mexico, plead limitation of action, as follows, to wit:

"(a) That in themselves, their ancestors, grantors, privies, or predecessors in interest or claim of interest, they have had open, notorious, actual, exclusive, continuous, adverse possession of the premises claimed, under color of title from the 6th day of January, 1902, to the date of the passage of this Act, and have paid the taxes lawfully assessed and levied thereon to the extent required by the statutes of limitation, or adverse possession of the Territory or of the State of New Mexico, since the 6th day of January, 1902, to the date of the passage of this Act, except where the claimant was exempted or entitled to be exempted from such tax payment.

"(b) That in themselves, their ancestors, grantors, privies, or predecessors in interest or claim of interest, they have had upon, notorious, actual, exclusive, continuous, adverse possession of the premises claimed with claim of ownership, but without color of title from the 16th day of March, 1889, to the date of the passage of this Act, and have paid the taxes lawfully assessed and levied thereon to the extent required by the statutes of limitation or adverse possession of the Territory or of the State of New Mexico, from the 16th day of March, 1899, to the date of the passage of this Act, except where the claimant was exempted or entitled to be exempted from such payment.

"Nothing in this Act contained shall be construed to impair or destroy any existing right of the Pueblo Indians of New Mexico to assert and maintain unaffected by the provisions of this Act their title and right to any

land by original proceedings, either in law or equity, in any court of competent jurisdiction and any such right may be asserted at any time prior to the filing of the field notes and plats as provided in section 13 hereof, and jurisdiction with respect to any such original proceedings is hereby conferred upon the United States District Court for the District of New Mexico with right of review as in other cases: Provided, however, that any contract entered into with any attorney or attorneys by the Pueblo Indians of New Mexico, to carry on such litigation shall be subject to and in accordance with existing laws of the United States.

"5. The plea of such limitations, successfully maintained, shall entitle the claimants so pleading to a decree in favor of them, their heirs, executors, successors, and assigns for the premises so claimed by them, respectively, or so much thereof as may be established, which shall have the effect of a deed of quitclaim as against the United States and said Indians, and a decree in favor of claimants upon any other ground shall have a like effect.

"The United States may plead in favor of the pueblo, or any individual thereof, as the case may be, the said limitations hereinbefore defined.

"6. It shall be the further duty of the board to separately report in respect of each such pueblo . . . "

"(a) The area and character of any tract or tracts of land within the exterior boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico and the extent, source, and character of any

water right appurtenant thereto in possession of non-Indian claimants at the time of filing such report, which are not claimed for said Indians by any report of the board.

"(b) Whether or not such tract or tracts of land or such water rights could be or could have been at any time recovered for said Indians by the United States by seasonable prosecution of any right of the United States or of said Indians. Seasonable prosecution is defined to mean prosecution by the United States within the same period of time as that within which suits to recover real property could have been brought under the limitation statutes of the Territory and State of New Mexico.

"(c) The fair market value of said water rights and of said tract or tracts of land (exclusive of any improvements made therein or placed thereon by non-Indian claimants) whenever the board shall determine that such tract or tracts of land or such water rights could be or could have been at any time recovered for said Indians by the United States by seasonable prosecution of any right of the United States or of said Indians, and the amount of loss, if any, suffered by said Indians through failure of the United States seasonably to prosecute any such right.

"The United States shall be liable, and the board shall award compensation, to the pueblo within the exterior boundaries of whose lands such tract or tracts of land shall be situated *or to which such water rights shall have been appurtenant* to the extent of any loss suffered by said Indians through failure of the United States season-

ably to prosecute any right of the United States or of said Indians, subject to review as herein provided. Such *report and award shall have the force and effect of a judicial finding and final judgment upon the question and amount of compensation due to the Pueblo Indians from the United States for such losses.* Such report shall be filed simultaneously with an in like manner as the reports hereinbefore provided to be made and filed in section 2 of this Act.

"At any time within sixty days after the filing of said report with the United States District Court for the District of New Mexico as herein provided the United States or any pueblo or Indians concerned therein or affected thereby may, in respect of any report upon liability or of any finding of amount or award of compensation set forth in such report, *petition said court for judicial review of said report,* specifying the portions thereof in which review is desired. Said court shall thereupon have jurisdiction to review, and shall review, such report, finding, or award in like manner as in the case of proceedings in equity. In any such proceeding the report of the board shall be prima facie evidence of the facts, the values, and the liability therein set forth, subject, however, to be rebutted by competent evidence. Any party in interest may offer evidence in support or in opposition to the findings in said report in any respect. Said court shall after hearing render its decision so soon as practicable, confirming, modifying, or rejecting said report or any part thereof. At any time within thirty days after such decision is rendered said court

shall, upon petition of any party aggrieved, certify the portions of such report, review of which has been sought, together with the record in connection therewith, to the United States Circuit Court of Appeals for the Eighth Circuit, which shall have jurisdiction to consider, review, and decide all questions arising upon such report and record in like manner as in the case of appeals in equity, and its decision thereon shall be final.

"Petition for review of any specific finding or award of compensation in any report shall not affect the finality of any findings nor delay the payment of any award set forth in such report, review of which shall not have been so sought, nor in any proceeding for review in any court under the provisions of this section shall costs be awarded against any party.

"17. No right, title, or interest in or to the lands of the Pueblo Indians of New Mexico to which their title has not been extinguished as hereinbefore determined shall hereafter be acquired or initiated by virtue of the laws of the State of New Mexico, or in any other manner except as may hereafter be provided by Congress, and *no sale*, grant, lease of any character, or other conveyance of lands, or any title or claim thereto, *made by any pueblo as a community, or any Pueblo Indian living in a community of Pueblo Indians, in the State of New Mexico, shall be of any validity in law or in equity unless the same be first approved by the Secretary of the Interior.*"

IV. THE QUESTIONS PRESENTED.

1. Whether unfair and dishonorable dealing by the United States, as set forth in the Act of August 13, 1946, is established by proof that the Pueblo Lands Board failed to carry out its duty as defined by Congress in the Act of June 7, 1924.

2. Whether the Indian Claims Commission Finding No. 24 shall be sustained or reversed:

> "*Finding* 24.
>
> "The Commission finds that the defendant's actions regarding the Peralta tract and the Pueblo of Isleta were not less than fair and honorable; that the Peralta settlement was fairly negotiated before the Pueblo Lands Board and was of benefit to all parties; and that the Exchange Quitclaim Deed was sufficient in form and execution to accomplish the settlement, was made for a mutual consideration, and did not require the subsequent formal approval of the Secretary of the Interior."

3. Whether unfair and dishonorable dealing is not shown by proof that an official agency of the United States, charged by Congress with separately reporting upon the title to Indian Lands, adopted a short cut and negotiated for a Quitclaim deed to be executed by the Indians and subsequently made no award to the Indians for the fair market value of the lands so quitclaimed.

V. REASONS RELIED ON FOR ALLOWANCE OF WRIT.

The reasons relied upon for the allowance of the Writ are that the Pueblo Indians are a simple, uninformed and inferior people (U. S. v. Sandoval, 231 U. S. 39, 34 S. Ct. 1) and

Congress has passed two acts for their assistance: The Pueblo Lands Board Act of June 7, 1924 (supra) and the Indian Claims Commission Act of August 13, 1946 (supra), and this case involves an interpretation of both of these Acts of Congress. That the alleged failure of the Pueblo Lands Board to carry out its duties and obligations to the Indians involves an official agency of the Government and Petitioner is entitled to have this passed upon by the highest court in the land. That justice is upon the side of the Indians who lost their lands through the negligence of the United States and have failed to be awarded its fair market value as required by Congress.

That the Exchange Quitclaim Deed is void as not having received the approval of the Secretary of Interior.

That the Findings and Opinion of the Indian Claims Commission upholding the validity of the Quitclaim Deed are contrary to Acts of Congress and the law of this court.

Acts of Congress:

25 U.S.C. 81 - R.S. 2103
25 U.S.C. 177 - R.S. 177
25 U.S.C. 331 - 43 Stat. 636

Decisions:

Pueblo of Santa Rosa v. Fall, 273 U.S. 315, 47 S. Ct. 361, 99 L. Ed. 325. U. S. v. Alonzo, 249 F2d 189 (certiorari denied, 355 U.S. 940, 78 S. Ct. 429, 2 L. Ed. 2d 421.)

Wherefore, Petitioner prays that a writ of Certiorari issue to review the judgment of the Court of Claims in the above-entitled case.

Dated this 17 day of May, 1961.

ARTHUR T. HANNETT
First National Bank Bldg.
Albuquerque, N. M.
Attorney for Petitioner

OF COUNSEL:
DUDLEY CORNELL
MARK J. CLAYBURGH

In the United States Court of Claims

App. No. 8-59

PUEBLO DE ISLETA

v.

THE UNITED STATES

ORDER

This case comes before the court on appeal from the Indian Claims Commission (7 Ind. Cl. Comm. 619). Upon consideration thereof, together with the briefs and oral argument of counsel,

IT IS ORDERED this tenth day of March 1961, that the decision of the Indian Claims Commission be and the same is affirmed.

BY THE COURT

MARVIN JONES
Chief Judge

Before The Indian Claims Commission

PUEBLO DE ISLETA,	)	
PETITIONER,	)	
vs.	)	Docket No. 211
THE UNITED STATES OF AMERICA,	)	
DEFENDANT.	)	

Decided: June 5, 1959

Appearances:

MR. DUDLEY CORNELL, WITH WHOM WAS MR. M. J. CLAYBAUGH, ATTORNEYS FOR PETITIONER.

MR. WALTER A. ROCHOW, WITH WHOM WAS MR. ASSISTANT ATTORNEY GENERAL, PERRY W. MORTON, ATTORNEYS FOR DEFENDANT.

OPINION OF THE COMMISSION

O'MARR, Commissioner, delivered the opinion of the Commission.

The petitioner in Docket 211 is Pueblo de Isleta, which, by admission of the defendant, is a tribe of Pueblo Indians recognized by the Secretary of the Interior. It is also authorized under the laws of New Mexico to sue and be sued as a corporation.

The pueblo of the Isleta is located about 12 miles south of Albuquerque on the west bank of the Rio Grande River (see map, Def. Ex. 26 near southeast corner). The parties hereto propose no findings as to the early history of the Isleta, but the Petition alleges that the village has been maintained at its present site for more than 300 years. Herbert O. Brayer, in Def. Ex. 17 (pp. 56-59), gives this background. In the days of the conquistadores the pueblo is supposed to have been situated on an island in the Rio Grande then known as the Rio del Norte. With the changing of the river bed, Isleta had ceased to be the "little island", as its Spanish name indicates. Soon after the advent of the Spaniards a Catholic chapel was established at Isleta. The Pueblo revolt, which began in 1680, caused the pueblo to be abandoned, some of the refugees founding a new pueblo, Isleta del Sur, ten miles to the south. Sometime between 1709 and 1718 Fray Juan de la Pena re-founded the pueblo and re-established the mission. Brayer gives the Isleta population as 304 in 1760, 487 in 1809, over 750 in 1850 and 1,000 in 1880.

The Isleta Pueblo Grant, shown on Def. Ex. 26 with the pueblo at about its center, contains about 130,000 acres. Def. Ex. 23 shows it to lie in Valencia and Bernalillo Counties. A patent (Def. Ex. 10 was issued to the Isleta November 1, 1864 for a tract containing 110,080.31 acres based upon the claim of the Isleta as confirmed by the Surveyor General of New Mexico. On October 7, 1933 a supplemental patent (Def. Ex. 11) to 20,405 acres was given the Isleta because such lands were erroneously omitted in the former survey and patent. This Isleta Pueblo Grant is not directly involved in the present claims; it is mentioned because of its relation-

ship to the lands here involved in that the latter lands adjoin the Pueblo on the south.

The Petition herein sets forth two causes of action. The first asks fair and just compensation for the loss of 14,780.745 acres known as the Peralta Tract (Ex. B of Petition), situated in the southwest corner of the Lo de Padilla Grant containing 51,940.82 acres (Pl. Ex. 5, Pet Ex. A: Def. Ex. 26). The Isleta assert aboriginal title thereto, and further allege that "in protection of its aboriginal title and to terminate the claims of non-Indian settlers, Petitioner purchased the said Lo de Padilla Grant on February 4, 1750, from the legal heirs of Diego de Padilla". They admit that Congress, by Act of May 31, 1933 (48 Stat. 108), appropriated $2.00 per acre to compensate them for the loss of said Peralta Tract.

The second cause of action seeks fair and just compensation for the loss of 2,582.78 acres constituting the Bosque de los Pinos Tract, located in the extreme eastern part of the Antonio Gutierrez and Joaquin Sedillo Grant (Pl. Ex. 6, Pet. Ex. D; Def. Ex. 26). This claim is also based both on aboriginal title and purchase of the title of the heirs of the original grant sometime prior to May 3, 1808. The Isleta have received no compensation for this land.

While the Petition does not specify the section of the Indian Claims Commission Act under which these claims are made, the Petitioner's Brief (p. 1) says that the claims are asserted under Section 2, Clause (5) of the Act, the case arising by virtue of the loss by Petitioner of its aboriginal and purchased lands as a result of the unfair and dishonorable dealings on the part of the defendant.

Each of the two causes of action presents a different fact situation and requires a separate decision by the Commission. The parties have briefed two general propositions which apply to both claims and these will be treated first.

ABORIGINAL TITLE

The first question pertinent to both claims is raised by the defendant's contention that neither Spain nor Mexico recognized aboriginal use of land by the Indians as creating any vested legal rights of ownership in the Indians (Def. Brief pp. 63-77) and that the policy of the United States as to "Indian title" based upon aboriginal occupancy applied only to lands which became a part of the public domain of the United States and neither of the tracts herein claimed by petitioner by virtue of aboriginal ownership ever became a part of the public domain under the cession from Mexico to the United States in 1848 since both tracts were within the exterior boundaries of valid Spanish land grants to non-Indians (Def. Br. pp. 57-63). The petitioner (Reply Brief pp. 23-27) argues that on the contrary, the laws of Spain prohibited the divesture of Indian title even when the same land occupied by the Indians had been given to non-Indians by official grant.

The question of the rights of Pueblo Indians to Spanish or Mexican lands based upon aboriginal use and occupancy has been discussed in our opinion in the case, *Pueblo de Cochiti v. United States,* Dkt. 136, 7 Ind. Cl. Com. 422, decided last March. It is not necessary to repeat here what we said there in holding *that Indian title did not attach to lands which never became a part of the public domain,* that is, lands which had passed to private ownership by virtue of

Spanish or Mexican grants made prior to the treaty of Guadalupe Hidalgo. (See last paragraph of 2d section of the Protocol of said Treaty).

Since it is apparent and undisputed that the lands in both causes of action, namely, the Peralta tract and the Bosque de los Pinos tract, respectively, had passed long prior to our acquisition of lands under the treaty of Guadalupe Hidalgo by Spanish grants to non-Indians, the petitioner here never acquired "Indian Title" to said lands.

GUARDIAN-WARD RELATIONSHIP

The second general question involving both causes of action concerns the relationship between the Isleta and the United States since 1848 and the resulting standards of conduct required of the United States. *This is materiel when the Commission is asked to decide whether certain actions of the United States meet the test of fair and honorable dealings.*

The petitioner briefs this issue (Pet. Brief pp. 22-24) because of the defendant's denials in its Answer (par. 6 and 20). An examination of these paragraphs shows that the defendant "specifically denies that an ordinary guardian and ward relationship exists between the defendant and petitioner".

The petitioner calls attention to the June 7, 1924 Act of Congress (43 Stat. 636), commonly known as "the Pueblo Lands Act", which refers to the United States "in its sovereign capacity as guardian of said Pueblo Indians "(Pet. Brief p. 22), *United States v. Sandoval* (231 U.S. 28) is cited as directly deciding that the Pueblo Indians were wards of the Government (Pet. Brief p. 23). In this 1913 decision, the Supreme Court held that Congress, in the exercise of its

control over Indian tribes, could prohibit by law the introduction of intoxicating liquors into the Indian pueblos in the State of New Mexico. The court goes into the history of the pueblos, describing the Indians as "essentially a simple, uninformed, and inferior people". During the Spanish dominion the Indians were treated as wards requiring special protection. They were elevated to citizenship after the Mexican succession. As to the United States, the court concluded that "by an uniform course of action beginning as early as 1854 and continued to the present time, the legislative and executive branches of the Government have regarded and treated the Pueblos of New Mexico as dependent communities entitled to its aid and protection, like other Indian tribes".

The petitioner does not attempt to distinguish between the Pueblo Indians and other Indian tribes in this regard, stating that the Commission has "disposed of the question" in Potawatomie consolidated dockets 15-B and 11, quoting the Court of Claims in *Chickasaw v. United States,* 94 C. Cl. 215, 234, describing the relationship as "similar to that of guardian and ward" (Pet. Brief p. 24). The petitioner also cites *United States v. Payne,* 264 U.S. 446, 448, which says "the United States occupies the position and assumes the responsibilities of virtual guardianship", and *Seminole Nation v. United States,* 316 U.S. 286, which requires the Government's conduct in dealings with the Indians to be "judged by the most exacting fiduciary standards".

The defendant gives its position in its objection to Petitioner's Proposed Finding 4 (Def. Brief pp. 44-46), citing the Court of Claims 1956 Sioux case and the Commission's Opinion in the 1957 Omaha case (6 Ind. Cl. Com. 73, 74).

Defendant contends that "there is no treaty, agreement or statute spelling out a guardian and ward or any other fiduciary relationship between this petitioner and defendant".

The petitioner (Reply Brief pp. 36-39) replies that the Treaty of Guadalupe Hidalgo and the Pueblo Lands Board Act both established this relationship.

Viewing the whole argument, it appears that the petitioner would be satisfied with the Commission's description of the relationship *as similar to that of guardian and ward.* The frequently cited Sandoval case, in the quotation set out above, says the Pueblos are dependent communities entitled to the Government's aid and protection, "like other Indian tribes".

FIRST CAUSE OF ACTION

The so-called Peralta Tract, which has already been identified, is said by petitioner to contain 14,780.745 acres (Petition pp. 4-5; Pet. Findings 5-7). This figure is taken from the survey plat (Ex. B attached to Petition). The defendant gives the acreage as 14,710.85 acres (Def. Brief p. 47), as set forth in the Exchange Quitclaim Deed (Ex. C attached to Petition). This deed will be discussed subsequently. Our view of this claim makes it unnecessary to determine the correct acreage, but see Defendant's Exhibits 7 and 8.

The Isleta claim this tract by aboriginal use and occupancy. Evidence offered as proof thereof is weak (see Pet. Finding 6). The defendant submitted no evidence thereon. *However, it is unnecessary to go into this matter because this land was purchased by the Isleta.* In its objections to Pet. Finding 7 (Def. Brief pp. 48-55), the defendant admits that the Peralta Tract is within the Lo de Padilla Grant which was deeded by the legal heirs of Diego de Padilla to the Pueblo

de Isleta under date of February 4, 1750. The original Spanish Grant was made by the Spanish Governor and Captain General of the Province of New Mexico to Diego de Padilla May 14, 1718.

Upon petition of the Pueblo de Isleta, the Court of Private Land Claims in Case No. 273 entered its Decree (Def. Ex. 2) on November 28, 1896, finding that the Lo de Padilla Grant, containing about 27,000 acres, was a perfect grant and that the Isleta had sufficiently connected themselves with the grantee Diego de Padilla and his lawful heirs to entitle them to have the court approve the validity of said grant. The court adjudged that said grant "is hereby established and confirmed forever to the heirs, assigns and legal representatives of Diego de Padilla, free and discharged from any and all claims and demands for or against the same on the part of the United States". The Decree also contains this final paragraph:

> It is declared by the court that the confirmation in this decree contained is made under Title XII, of Book IV, of the Recopilacion de Leyes de Los Reynos de Las Indias, the Royal Decree of the King of Spain of October 15th, 1754m, and the law of the nations.

A patent (Def. Ex. 1) was issued April 9, 1908 for said Lo de Padilla Grant to the "heirs, assigns and legal representatives of Diego de Padilla", in accordance with and subject to the terms of the Act of Congress of March 3, 1891, which established the Court of Private Land Claims. The survey of said grant (Pl. Ex. 5) shows the acreage as 51,940.82 acres. A great discrepancy will be seen between this figure and the 27,000 acres in the 1896 Decree (Def. Ex. 2); however, it is

reasonably plain that the Diego de Padilla Grant was intended to be the larger acreage.

Some years later, in a quieting title action specifically involving the Peralta Tract entitled *Federico Sanchez, et al. v. Pueblo de Isleta*, the Valencia County District Court entered its Findings of Fact, Conclusions of Law and Decree (Def. Ex. 3) on February 3, 1915, in favor of the plaintiffs and against the defendant. Finding 1 concerns the 1718 Spanish Grant to Diego de Padilla; Finding 2, the 1750 conveyance to the Isleta. The findings of fact continue:

> 3. That on the 15th day of May, 1797, Manuel Aragon, Manuel Antonio Aragon, Domingo Chavez, Vincente Chavez, Juan Aragon, Francisco Javier Aragon, Jacinto Sanchez, Felipe Montoya, Simon Sedillo, Francisco Garcia, Jose Ignacio Molina, Lorenzo Romero and Francisco Aragon purchased from the said Pueblo of Isleta and the said Pueblo of Isleta conveyed to the said persons, a portion of the grant made as aforesaid to Diego de Padilla, and by his heirs conveyed to said Pueblo de Isleta, which portion so purchased by said above named persons is bounded on the north by lands of the defendant, on the south by lands of Los Lentes or Peraltas, on the east by the mountain, and on the west by the Rio Grande del Norte, measuring from south to north 2425½ varas.
>
> 4. That the said purchasers of said portion of said grant to Diego de Padilla entered into possession of the same, and they and their descendants and assigns have remained in continuous possession thereof without any interference from anyone until just before the beginning

of this suit, and that the plaintiffs herein and those whom they represent and for whom they act, are descendants and assigns of said original purchasers under the deed of May 15, 1797.

Finding 5 sets out the Court of Private Land Claims action and 1896 Decree confirming the Padilla Grant. Finding 6 finds that the defendant made no claim to the land sold in 1797 and no attempt to interfere with the possession of the plaintiffs until shortly before the beginning of this suit. In its conclusions of law, the court held that the confirmation by decree of the Court of Private Land Claims inured to the benefit of the plaintiffs as fully as to the benefit of the defendants, and that title was vested in the plaintiffs and those whom they represent. The court, therefore, ordered title to the tract described in Finding 3 quieted in the plaintiffs and those whom they represent, being the descendants or successors in title and interest of the persons named in Finding 3 who made the May 15, 1797 purchase from the defendant, the Pueblo de Isleta.

We shall discuss the questions involving these two decisions before going into subsequent events. The first question is the legal effect of the 1896 Decree of the Court of Private Land Claims. The defendant contends that the court's decree and the patent based thereon were conclusive only as between the Isleta and the United States and did not affect the rights of any other person in the land (Def. Brief pp. 17: 81-83). *Ainsa v. New Mexico and Arizona Railroad*, 175 U.S. 76, 90 is cited. The patent is said to be only a quit-claim deed from the United States and third parties

would have to assert their claim of title in local courts of general jurisdiction.

The petitioner, in objecting to Defendant's Finding 19, maintains that the private rights of non-Indians most certainly were affected by the decree of the Court of Private Land Claims confirming title to the Lo de Padilla Grant and the subsequent issuance of a patent to the petitioner (Reply Brief p. 5). This is not consistent with petitioner's own statements as to the same court in the second cause of action (Pet. Brief pp. 35-36). "The Court of Private Land Claims could not adjudicate title between Indians and non-Indians. This jurisdiction was expressly forbidden under the Act that created the Court", referring to Clause 2, Sec. 13 set out in Footnote 78.

As to the effect of the patent, petitioner says "the Commission has determined that the issuance of patents to non-Indians amounted to a divesture of title clearly entitling the Indians to just compensation", citing *Creek Nation v. United States,* 302 U. S. 290 (Reply Brief p. 5, footnote 14). However, the 1908 patent expressly provided that it was based upon the decree of the Court of Private Land Claims and that "said grant is made subject to all the limitations and terms of the said Act of Congress of March 3, 1891" (Def. Ex. 1). We therefore agree with the defendant that the court's Decree and the subsequent patent did not affect any other private rights to such land. The Decree only confirms the title "free and discharged from any and all claims and demands for or against the same on the part of the United States" (Def. Ex. 2). This is consistent with the holding

in the Ainsa case mentioned above, in which the Supreme Court said:

> . . . . all decisions under this act (of March 3, 1891) shall be conclusive between the claimants and the United States only, and shall not affect the private rights of any person, as between himself and any other claimant.

Applying this to the instant case, the Decree in Case No. 273 and the patent based thereon did not affect the private rights of those who subsequently claimed title to the Peralta Tract in the Sanchez case, and the Valencia County District Court had jurisdiction to determine those rights in a quieting title action. As stated by the latter court, the confirmation in Case No. 273 inured to the benefit of all claimants, in that the original grant was held to be perfect.

The next question, then, concerns the effect of the Sanchez decision. The defendant has a section (Def. Brief pp. 77-79) devoted to the proposition that petitioner cannot recover for the Peralta Tract under a title by purchase "since it has been judicially determined by a court of competent jurisdiction that petitioner has not owned the tract since 1797". *United States v. Candelaria* (271 U.S. 432) is cited to show that a state court had such jurisdiction. *The defendant concludes that "petitioner, therefore, is estopped by that judgment (Sanchez) to claim that it owned the Peralta tract".*

The petitioner first argues that the defendant's Answer does not plead a defense of estoppel by judgment (Reply Brief p. 28). An examination of the Answer indicates this to be technically true. Allegations are contained therein concerning the Sanchez case (pp. 4-5). Defendant's plea of res judicata involves rather an alleged subsequent deter-

mination by the Pueblo Lands Board that the Peralta Tract was the property of non-Indians. (Answer p. 7). As will be seen later concerning the Board's actions, its determination was based on the court's decision in the Sanchez case.

Petitioner then argues that the Valencia County Court's decree was void, citing the Candelaria case (Reply Brief pp. 30-34). The question involved was whether a state court judgment in a quieting title action brought by the Pueblo of Laguna and a subsequent United States District Court judgment were res judicata in a third action involving the same land brought by the United States on the theory that these Indians were wards of the United States. The Supreme Court held that the Indians of the pueblo are wards of the United States and hold their lands subject to the restriction that the same cannot be alienated in any wise without its consent; that a judgment or decree which operates directly or indirectly to transfer the lands from the Indians, where the United States has not authorized or appeared in the suit, infringes that restriction; and therefore the United States is not barred by a former judgment unless the United States was a party to the suit or authorized the same. If the suit was begun and prosecuted by the special attorney employed by the United States to represent the Pueblo Indians, a position provided for by Congress in 1898, the court said this would as effectively conclude the United States as if it were a party to the suit. Although the words "begun and prosecuted" are used, it is assumed that the appearance of this special attorney to represent pueblos as either plaintiffs, defendants or intervenors would have the same effect, the

vital point being that the United States was represented in the suit.

It is apparent that the United States was not a party in the Sanchez case. The Petitioner does not say who represented the Isleta and it is not shown in the court's decree (Def. Ex. 3). The decree (p. 1) indicates that the cause was argued and submitted to the court with leave to the respective parties to submit written briefs, and that the defendant failed to present a brief.

The petitioner also cites *Alonzo v. United States,* 249 F 2nd 189, and quotes therefrom (Reply Brief pp. 31-33). The United States, in its own behalf and on behalf of the pueblo of Laguna, had brought an action in the United States District Court to enjoin certain parties from prosecuting an action in a state court in which the Pueblo was one of the defendants. The United States Court of Appeals, Tenth Circuit, affirmed the issuance of an injunction, holding that restrictions against alienation apply to lands acquired by the Pueblo through purchase, as well as to lands acquired by the Pueblo in any other manner, and that the United States was entitled to injunctive relief, the United States not being a party to the state court suit.

Petitioner lists cases (Reply Brief p. 33) to support the statement that "though the Indians' interest is alienated by judicial decree, the United States may sue to cancel the judgment and set the conveyance aside where it was not a party to the action".

Summing up this question of the effect of the Sanchez decision it is our conclusion that the court's decree is not void; it is significant in that it is the determination of a

court of competent jurisdiction that the Isleta sold the Peralta Tract in 1797. The petitioner has produced no evidence to prove that the 1797 sale was not made. Petitioner is content to merely argue (Reply Brief p. 16) that "the defendant's own exhibits wholly discredit the findings (of the court) as vague and indefinite, to-wit: (1) the Report of the Pueblo Lands Board and (2) Pueblo Indian Land Grants of 'Rio Abajo', New Mexico, Herbert O. Brayer". The reference is to the inability of the parties to definitely identify the tract from the description in the decree, resulting in continuous controversy between the parties as to their rights in the area. This matter becomes vital in the following discussion of the actions of the Lands Board.

Proceeding then to subsequent events, the Pueblo Lands Board was created by Act of Congress of June 7, 1924 (45 Stat. 636). The Board consisted of three members: one representing the Secretary of Interior, another the Attorney General, and the third was appointed by the President of the United States (Def. Brief p. 20). The Board was directed to investigate, determine and report upon all lands within the exterior boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico under authority of the United States or any prior sovereignties, or acquired by said Indians as a community by purchase, or otherwise, title to which the Board shall find not to have been extinguished in accordance to the provisions of the Act. The Board was to make an award to the Pueblo for any loss of lands or water rights as a result of the failure of the United States seasonably to prosecute the rights of the Pueblo. The purpose of the Act was also to quiet title to lands claimed

by the Indians, and the United States Attorney General was directed to file in the District Court bills of complaint to determine adverse claims (Reply Brief p. 42).

On August 17, 1928 the Pueblo Lands Board issued two reports on the Isleta Pueblo; Report #1 on title to lands granted or confirmed to the Pueblo Indians not extinguished (Def. Ex. 7); and Report #2 concerning Indian titles extinguished (Def. Ex. 8). In Report #2 (pp. 5-7) the Board deals with the Peralta Tract as follows:

> The Lo de Padilla Grant, originally made to Diego Padilla on May 14, 1718, was purchased by the Pueblo of Isleta on February 4, 1750, from the heirs of said Padilla and patented to the said Pueblo on April 9, 1908. Said grant so patented contains 51,940.82 acres. All of the land included in this grant was conveyed to the Pueblo Isleta in 1750 by the heirs of Diego Padilla. The grant appears to have been confirmed by the Court of Private Land Claims on November 2, 1896. However, on February 3, 1915, there was handed down a decision by the Judge of the District Court for the County of Valencia in a case known as Federico Sanchez, et al. vs. the Pueblo of Isleta. It appears that in 1797 ten natives, presumably the descendants of the original grantees, purchased back from the Pueblo Indians part of the grant. The decree states that the descendants of these purchasers entered into possession and retained possession until just before the beginning of the suit. The description of the area in the decree however, which it was alleged was at that time so deeded to the Indians, is not such as to enable either the Indians

Board's Reports as to the Isleta, showing that suit was filed in the United States District Court to quiet title to certain lands awarded by the Board to the Isleta and a final decree entered January 6, 1930. The court reversed the findings of the Board as to certain small tracts, for which the Board made an additional award. It does not appear that the Peralta settlement was involved in this subsequent litigation.

One other document of the Lands Board appears in the record, a Memorandum dated June 30, 1931 (Def. Ex. 19). It covers the various areas found to have been extinguished, upon which no award was recommended to the Indians. The Board said that obviously the Government could not have recovered these lands by seasonable prosecution because title had become perfect and complete in the non-Indians prior to the Treaty of February 2, 1848 (p. 3). Such an area was at Isleta. The Isleta case, however, is said to be different from the rest. "Here a voluntary agreement was arrived at between the parties. Deeds covering the compromise were exchanged with the approval of the Secretary of the Interior". Details are given at p. 14, similar to the findings in Report #2, with the addition of certain testimony showing that the Isleta approved the settlement. Jose Padilla, governor of the pueblo, is quoted as testifying that it was a fair deal and was agreed to by the council. Pablo Abeita, Antonio Abeyta, a member of the council, and Jose Carpio, also a member, agreed to Governor Hagerman's statement as to the exact area to be included in the transaction. Hagerman was a member of the Board.

or the non-Indians to definitely identify the tract, and this has resulted in continuous controversy between the interested parties as to their respective rights in the area referred to. At the town of Peralta a considerable settlement is situated near the river, toward the eastern end of the tract so deeded, and the Indians have never claimed possession of or any title to the area within and surrounding this town.

The situation resulted in negotiations between the people of Peralta and the heirs of the original Spanish grantee on the one hand, and the Isleta Indians through their duly appointed representatives on the other, looking toward an agreement whereby a fair division of the Lo de Padilla area could be arrived at. After a good deal of negotiation, an understanding was reached whereby 14,710.85 acres, comprising the Peralta settlement and adjacent lands were segregated from the Lo de Padilla Grant, and to the satisfaction of the Indians and non-Indians alike, set aside by the Board as the area to which the Peralta people are entitled. The Board therefore finds (see Report No. 1) that of the 51,940.82 acres patented as the Lo de Padilla Grant, the Indians are now entitled to 37,229.97 acres and the non-Indians to 14,710.85 acres.

The Board finds as to this 14,710.85 acres known as the Peralta tract, that it could not have been recovered by the United States by seasonable prosecution as defined in the Act, and that therefore the Isleta Indians are entitled to no compensation for the loss thereof.

Defendant's Exhibit 9 contains amendments to the Land

In 1931 a subcommittee of the Senate Committee on Indian Affairs began an investigation of the condition of the Indians. In the case of the Isleta, it included the Peralta settlement effected by the Lands Board. Testimony of three Isleta Indians was taken in June, 1931 (Def. Ex. 12). On January 28, 1932 Judge Richard H. Hanna, as private counsel representing the Isleta, made a statement (Def. 12 a, pp. 11155-11159) and intriduced various exhibits (pp. 11159-11170) in seeking additional compensation, under the bill before the committee, for the Peralta Tract. A statement of H. J. Hagerman to the Pueblo Lands Board is included (pp. 11164-11167), which gives further information on the Peralta settlement. A reading of this record shows some confusion, but generally indicates that the settlement was considered fair by all parties, including Walter C. Cochrane, the special attorney employed by the United States to represent the Pueblo Indians. Judge Hanna asked that the Isleta be awarded at least $2.00 an acre for the Peralta Tract, since that was the value fixed by the Board for two small parcels in the same area for which an award had been made. The Peralta Tract had been appraised at $284,132.56 in the proceedings of the Lands Board. (Reply Brief p. 16).

In Reports of March 16, 1932 (Def. Ex. 14) and of May 10, 1932 (Def. Ex. 15), the House of Representatives Committee on Indian Affairs approved an additional award of $2.00 an acre for the 14,710.85-acre tract. Both reports state:

> The Board made no award for this tract, apparently holding in error that it could not have been recovered for the Indians. (Def. Ex. 15, p. 4).

The appropriation was made by Act of Congress of May 31, 1933 (48 Stat. 108). The defendant sets out the conditions of the Act and the acceptance of the payment by the Isleta (Def. Finding 31).

Now as to the questions argued by the parties, the first involves the defense of res judicata as made in defendant's third defense (Answer, p. 7, par. 16). The petitioner considers this defense abandoned by the defendant (Reply Brief p. 29). The situation is confusing because the Answer refers to the Land Board's determination that the 14,710.85 acres was the property of non-Indian settlers. Defendant's Brief, however, refers to the Board's decision not to make a money award for the Peralta Tract because it could not have been recovered by seasonable prosecution (Def. Brief pp. 24, 90). Defendant says "this Commission is not authorized to overrule that decision by the Pueblo Lands Board". It is the matter of an award which the 1924 Pueblo Lands Act made subject to review by the United States District Court and Circuit Court of Appeals. Since no appeal was taken, defendant contends that "such determination has the force and effect of a final judgment" (Def. Brief p. 24).

The next proposition is petitioner's claim that defendant's actions were less than fair and honorable in causing the petitioner to deed its lands known as the Peralta Tract (Pet. Finding 7, Pet. Brief pp. 25-32, Reply Brief p. 41). In the settlement negotiated by the Lands Board, the Isleta and certain non-Indian claimants executed an exchange quitclaim deed on May 1, 1928 whereby the Isleta quitclaimed all their interest in the 14,710.85-acre Peralta Tract and the non-Indians quitclaimed their interest in the balance of the

Lo de Padilla Grant. The original deed was lost (Pl. Ex. 3), but photostats and copies preserved the record (see Exhibit C in Petition). The deed expresses the desire of the parties to amicably settle and dispose of the dispute and controversies between the parties as to where within the Lo de Padilla Grant the 2425½ varas of land purportedly deeded by the Isleta and involved in the Sanchez case lies.

The petitioner contends that the Lands Board should not have negotiated the settlement and the United States should have filed a bill of complaint in District Court to determine adverse claims, as provided in the first paragraph of the 1924 Act (Pet. Brief pp. 25-27). But it appears that this was a situation in which a negotiated voluntary settlement was certainly justified. The Sanchez decision established that the Isleta had sold by deed a tract in 1797 to certain non-Indians and no evidence was presented to the Lands Board to prove otherwise. *The description of the land in the deed was such that its location and extent was uncertain.* This was not unusual in ancient documents. And since the determining factor was the intention of the parties to the 1797 transaction, the most practical solution would be an amicable agreement between the successors in interest making certain the boundaries of the deeded tract. This is what was done, as expressed in the exchange quitclaim deed itself. After such a settlement was completed, it should be unnecessary for the United States Attorney General to file a bill of complaint to determine adverse claims to the lands involved in the settlement. After the settlement, the Peralta Tract was not land *claimed* by the Isleta, as required in the paragraph quoted by petitioner from the 1924 Act (Pet. Brief p. 25).

The petitioner asks that the Commission decide whether or not the defendant used unfair tactics, persuasion and undue influence in effecting this settlement (Pet. Brief p. 28). From a review of the record, we consider the proceedings fair and voluntary. Petitioner's statement that the Board "threatened dire results if the Petitioner did not execute the instrument of conveyance to the non-Indians" is not supported by evidence. The Indians being told that the settlement "would eliminate a lot of litigation" was certainly a proper appraisal of the situation. Mr. Cochrane, the special Pueblo attorney, was present to represent the Isleta and signed the exchange quitclaim deed as a witness (Exhibit C). Judge Hanna, as private counsel for the Isleta before the Senate Committee (Def. Ex. 12a, p. 11158), said "that though our representation of these Indians, as private counsel, was known and had continued for three years at that time, we were not advised of any of the negotiations or proceedings referred to, and were not in any way consulted about it, or given any opportunity to advise them." However, the petitioner cannot consistently complain of their representation by the special Pueblo attorney, because elsewhere in this case the petitioner complains that in certain litigation the United States was unfair and negligent in not providing representation by the United States District Attorney or the special Pueblo attorney employed by the United States (Reply Brief pp. 31, 39, 40; Pet. Brief pp. 21-23). The settlement was generally considered fair (see Def. Finding 29). No subsequent attempt was made to void the settlement, only to obtain some compensation from the Government.

The petitioner further argues that in the exchange deed,

the Indians were given nothing that they did not already have (Pet. Brief p. 26). This is in effect saying that the deed lacked mutual consideration. It assumes that the Isleta were the undisputed owners of all the land involved. This is an incorrect assumption. As has been pointed out, the record is virtually unchallenged that the Isleta made a sale to non-Indians in 1797. The Lands Board found that the Indians had never claimed possession of or any title to the area within and surrounding the town of Peralta, where a considerable settlement was situated (Def. Ex. 8, p. 6). Antonio Abeita, an Isleta Indian, testified, when asked how far back the early Spanish settlers at Peralta dated. "Apparently it dates back to the Spanish rule" (Trans. Dec. 4, 1956, p. 32). Diego Abeyta, another Isleta, said that several hundred people lived in and surrounding Peralta at the time of the quitclaim deed (p. 53). Pablo Abeita testified in 1931 (Def. Ex. 12, p. 10073). ". . . . I do not doubt there are many of them (non-Indian settlers) in good faith had acquired good title to that, so they thought", under a deed executed by Indians. Under such circumstances, there certainly was mutual consideration for the exchange quitclaim deed. The disputed location and extent of the land purchased in 1797 made the settlement of mutual benefit to all parties.

The petitioner also questions the sufficiency of the signatures of the non-Indians on the quitclaim deed (Pet. Brief, pp. 17, 28), referring to the 1928 letter (Pl. Ex. 4) of Walter C. Cochrane in which he expresses his purpose to get the signatures of the people at Peralta and forward the same to Washington for approval, securing the signatures of people outside of the state thereafter. He adds,

> I believe if those at Peralta will execute the deed that none of the others would dare cause us any trouble. That this view is not satisfactory from a strictly legal point of view, I know - but it is not a question of what we want to do, but a question of what we can get done. (See Pet. Finding 7, Footnote 21)

Since the deed was executed to the satisfaction of the Pueblo atorney representing the Isleta and since the record does not show that any "trouble" developed from non-signers claiming an interest therein, it does not appear that the Isleta were hurt in any way by the manner in which the deed was drawn and executed.

Finally, the petitioner maintains that the exchange quitclaim deed was void because it was not approved by the Secretary of the Interior (Pet. Brief pp. 30-32) Several legal cases are cited (p. 32). Two general statutes are set out in Footnote 68, and paragraph 17 of the Act of June 7, 1924 in Footnote 69. The latter provides that no sale of lands "made by any pueblo as a community, or any Pueblo Indian living in a community of Pueblo Indians, in the State of New Mexico, shall be of any validity in law or in equity unless the same be first approved by the Secretary of the Interior".

A June 4, 1929 letter (P. Ex. 3) from the Lands Board's records, but without signature, indicates that the deed was lost and any record of it being sent to Washington for the approval of the Department was lacking. The writer expresses his inclination that the approval of the Office was not necessary but that it would be better to find the document. Copies of the deed do not show any endorsement

thereon by the Secretary of the Interior, although the text of the deed says, "by and with the consent of the Secretary of the Interior".

Although there are several other statements that the deed had the Secretary's approval (Def. Brief p. 87), the defendant admits "that there is reason to believe that the deed was never submitted to the Secretary for approval" (pp. 87-88). The Secretary of the Interior, by letter of December 10, 1931 to the honorable Dennis Chavez (Appendix D., Def. Brief pp. 116-117), advised that an examination of the files disclosed no record of the receipt of the deed. He also wrote:

> From the context of the letter (from Mr. Chavez concerning the mutual exchange deed), it appears that the deed was one executed in the settlement of claims by the Pueblo Lands Board, and does not require submission to the secretary of the Interior for approval.

It is therefore defendant's position that the approval of the Secretary was not required (Def. Brief p. 89), because "the approval of such a settlement was entirely within the function and sound discretion of the Board". Defendant also says the Peralta Tract did not fall within the provision of paragraph 17 of the Pueblo Lands Act since it did not belong to petitioner. A "possible explanation of why the 1928 deed contained language indicating approval by the Secretary of Interior" is given in Footnote 286 which quotes the written statement of Mr. Hagerman (Def. Ex. 12a, p. 11166) as follows:

> As a member of the Pueblo Lands Board and particularly a representative of the Secretary of the Interior and

knowing that this matter would be referred to me for approval I have simply taken the part of an arbiter in this matter but I told both parties that if the deal was put through on the lines agreed upon I would approve it.

It appears to us that it would have been better practice to have obtained the formal approval of the Secretary of the Interior, and certainly the loss of the original deed was regrettable. However, we are not prepared at this late date to say that the deed was void. *There are no legal cases cited which determine whether such a settlement negotiated by the Lands Board would be void without such approval of the quitclaim deed involved.* In 1931 the Secretary of the Interior did not think that approval was required because the deed was executed in the settlement of claims by the Board. It seems reasonable that the Lands Board, a creation of Congress with a member appointed by the Secretary of the Interior, should have the power.

It is therefore our conclusion that the petitioner has not established that the defendant's actions in regard to the Peralta settlement were less than fair and honorable. The settlement was not only fair but desirable and of benefit to all parties.

The payment by Congress in 1933 of $2.00 an acre for the 14,710.85-acre Peralta Tract, after committee hearings and recommendation, raises several additional questions. The petitioner says this Act recognized the liability of the United States and amounted to a finding by Congress that the Lands Board was wholly wrong and erroneous in holding that the land could not have been recovered by seasonable prosecution (Pet. Finding 7 p. 15). The defendant, on the

other hand, says this was a determination by Congress that $2.00 an acre was a fair value for the land, and under the terms of the appropriation, the petitioner is not entitled to additional compensation (Def. Brief pp. 30-33; 90). The petitioner replies (Reply Brief pp. 14-16):

> The fact that Judge Richard H. Hanna pled for $2.00 per acre before the Senate Subcommittee in Santa Fe and Congress later awarded this exact amount totalling $29,421.70 is not material or relevant, until the Commission considers the matter of offsets. This was a gift that Congress was not required to make since the statute of limitations had long since run against the Board's action in not making an award.

We consider the appropriation by Congress something less than a recognition of liability for the loss of the Peralta Tract. From a reading of the committee hearings and reports, it appears that Congress and its committees were literally leaning over backwards to satisfy these Pueblo Indians and that the appropriation was in fact a gratuity. The statement in the House Committee Report, previously quoted, that "the board made no award for this tract, apparently holding in error that it could not have been recovered for the Indians" is not a positive statement of fact.

The defendant also points out the 1949 action of Congress in directing that title to three tracts, including 11,142.39 acres of the Peralta Tract acquired by defendant in the submarginal land program, be held in trust for the petitioner, as further evidence of the fair and honorable treatment by the defendant (Def. Brief p. 90). Thus petitioner has been given almost all of the Peralta Tract, in addition to the com-

pensation appropriated by Congress based on the total acreage.

Accordingly, we do not believe that the petitioner has shown that the defendant is liable on its first cause of action.

SECOND CAUSE OF ACTION

Petitioner's second cause of action asks just and fair compensation for the loss of 2,582.78 acres constituting the Bosque de los Pinos, which will hereafter be referred to as the Bosque Tract. It is designated "Antonio Gutierres and Joaquin Sedillo Grant, Tract No. 1" on the survey plat (Ex. D. in Petition; Pl. Ex. 6). The east boundary is the old bed of the Rio Grande River and the west boundary is the river bed after the river changed course at a time which has not been made certain in the record. The Lo de Padilla Grant lies immediately to the east and the Isleta Pueblo Grant to the north.

On September 9, 1896 two petitions were filed in the Court of Private Land Claims by J. Fancisco Chavez against the United States, seeking confirmation of the Gutierrez and Sedillo grants (Def. Finding 35; Def. Ex. 18, p. 1). On November 13, 1896 the Pueblo de Isleta, represented by attorney G. L. Solignac, petitioned the court that it be allowed to join as a co-petitioner, adopting the allegations of the Chavez petitions (Def. Ex. 18, p. 5). Upon the entry of such an order, the court consolidated the two cases, No. 274 and 275, and trial was had, as reported in the Transcript of Record (Def. Ex. 18). In its Decree of Confirmation of June 2, 1897 (Def. Ex. 4; Def. Ex. 18, p. 35), the court found that the Spanish grant to Antonio Gutierrez was made on November 5, 1716, and the grant to Joaquin Sedillo some

time prior to 1734; and that in 1785 Clemente Gutierrez died in possession of and owning both tracts. The court also found:

> 4. At some time prior to the 3rd of May, 1808, the Pueblo of Isleta had acquired the title of Clemente Gutierrez to all of said land lying on the west side of the present river bed of the Rio del Norte and had entered into possession of the same and has held such possession down to the present time . . . . .
>
> 5. By a number of different deeds from the children and heirs of Clemente Guttierrez, beginning in the year 1819, Francisco Xavier Chavez acquired all of the Gutierrez title to so much of said lands as lie to the east of the present river bed of the Rio Grande del Norte which portion of said lands is known as the Bosque de los Pinos . . . .
>
> 7. After the making of the original grants the Rio Grande del Norte formed a new channel west of what was subsequently known as the Bosque de los Pinos, leaving its former river bed at a considerable distance east of the new one, and that portion of the land in question lying between the old and new river beds has since been known as the Bosque de los Pinos and is that which was acquired by Francisco Xavier Chavez.

The court therefore ordered the claim for the Bosque Tract confirmed to J. Francisco Chavez, who had inherited the title of Francisco Xavier Chavez, and the land lying west of the present river bed to the Pueblo of Isleta. An opinion in Case No. 274 (Def. Ex. 18, pp. 37-40) discusses the two questions presented in the case: first, as to the boundaries

of the land granted, and second, whether the plaintiff or his co-petitioner is so connected with the title as to authorize the proceeding. One judge dissents (pp. 40-44).

The United States appealed the decision of the Court of Private Land Claims to the United States Supreme Court. Defendant's Exhibit 5 is a copy of the opinion affirming the lower court, reported as *United States v. Chavez,* 175 U.S. 509, October term, 1899. Mr. Frank W. Clancy is attorney of record for the appellees (p. 518). A sketch map appears at p. 519. The essence of the opinion, delivered by Justice McKenna, is that the title asserted by the appellees is deficient in the support of direct evidence, but such deficiency is supplied by the probative force of the possession of the land. The possession of the Isleta is said to have been open and notorious "as far back as the memory of the oldest living inhabitant can extend" (p. 524). The court further makes it clear that a proceeding before the Court of Private Land Claims "is not a litigation between conflicting private interests", but "is one against the United States, and determinative only of the title against the United States" (p. 525). Confirmation is subject to all other interests and claims, and the forum for their determination is the ordinary courts (*Ainsa v. New Mexico and Arizona Railroad,* ante, 76; and *United States v. Conway, ante,* 60; both decided at the present term).

On November 15, 1909 a joint patent (Def. Ex. 6) was issued to J. Francisco Chavez and his heirs and to the Pueblo of Isleta for the separate tracts as found and described by the Court of Private Land Claims.

The Pueblo Lands Board made no particular mention of

the Bosque Tract in its reports. In its Report #2 (Def. Ex. 8, p. 4½-5) the Board found within the area of the Gutierrez and Sedillo Grants, containing 19,935.91 acres, fifteen tracts aggregating 59.848 acres to have been extinguished. The Board says, "There does not seem to have been any serious controversies between the Indians and the non-Indians in this section". The Board found that the small tracts could have been recovered by seasonable prosecution and made an award to the Isleta therefor.

At the 1931 hearings of the Senate subcommittee previously referred to (Def. Ex. 12), Diego Abieta testified, "Now, we do not know whether the Bosque Pino was brought up before the Land Board or not" (P. 10092). In the inquiry that followed (pp. 10092-10095), Mr. Jennings, a member of the Board, considered the confirmation to Chavez by the Court of Private Land Claims and the affirmance by the Supreme Court to be res adjudicata and that they had no authority to go into that matter. Mr. Hanna expressed his view that the Government had not represented the Isleta before the Board. Mr. Fraser, special assistant to the Attorney General assigned to the Land Board's matters, said that the court decision and affirmance "indicated to the minds of the board that the title had passed long ago in Spanish times, and that, therefore, the United States could not in the language of the pueblo lands board act have recovered this land by seasonable prosecution".

Neither the House (Def. Ex. 14, 15) nor Senate (Def. Ex. 13) Committee Reports mention the Bosque Tract, and it does not appear that Congress ever made an award to the Isleta therefor.

The first question presented by the parties hereto involves the defendant's Fifth Defense (Answer pp. 8-10) that the decision of the Court of Private Land Claims is res judicata of the question presented by petitioner in its second cause of action. The petitioner devotes a section in its original brief (pp. 19-21) to this matter but claims in its Reply Brief (p. 29) that the defendant has abandoned this defense. However this may be, both parties now agree that the Court of Private Land Claims did not have jurisdiction to decide any conflicting claims between Chavez and the Isleta. Such claims had to be submitted to courts of general jurisdiction. (Def. Finding 36; Reply Brief p. 20).

The next question is whether the Isleta, at the time of the Treaty of Guadalupe Hidalgo, had title to the Bosque Tract by virtue of purchase of said land from others claiming title under a grant from Spain. The defendant contends that there is no proof of purchase by the petitioner at any time (Def. Brief pp. 77, 79-81), emphasizing that throughout the litigation discussed above, the petitioner made absolutely no contention of ownership of that tract. The petitioner (Reply Brief pp. 27-35) answers that such evidence is negative (p. 35). Actually, the fact of purchase depends upon the time of the change of the river bed, which has not been made certain in the record. The Court of Private Land Claims found that the Rio Grande del Norte formed a new channel on the west border of the Bosque Tract "after the making of the original grants" (Finding 7 previously quoted). Since the court further found (Findings 4 and 5) that the Isleta acquired title to the lands west of the new (present) river bed and that Francisco Xavier Chavez acquired title to the

land east of the new river bed, the implication is present that the change of the river bed occurred before the purchase by the Isleta. It has been agreed that these findings are not res judicata. However, the petitioner has presented no substantial evidence to prove that the facts are otherwise. As the record now stands, we can see no other conclusion than that the Isleta never purchased the Bosque Tract.

This leaves only one foundation for the petitioner's second cause of action, its claim of aboriginal title. The only evidence cited by the petitioner in support of its Finding 6 on aboriginal use and occupancy is the testimony of three Isleta Indians (see Footnote 11, Pet. Brief, pp. 10-12). Antonio Abeita (age 75) testified that during his lifetime the Isleta has used approximately the north one-third of the Bosque Tract for irrigation farming and had built small houses upon the land (pp. 10-11). The southern portion was used for grazing and hunting (p. 12). He said, from what "our fathers" tell us, they used it for a very long time, before they purchased the grant (p. 12). About 1913 or 1915 the Indians were stopped from going on the Bosque Tract by a fence built during the growing season and the Indians couldn't harvest their growing crops that season (Trans. p. 27). Diego Abeyta testified that according to tradition, they have used the Bosque Tract since time immemorial (Pet. Brief P. 12). Felipe Jiron (age 73) testified that he farmed with his father a 5-acre tract near the north boundary of the Bosque Tract from about 1893 or 1895 until it was fenced between 1913 and 1915 (Trans. pp. 64-68). About 20 Isleta Indians farmed 2 to 5-acre tracts in that area, a few having permanent houses and some going back to the village

(pp. 64-65). The defendant produced no evidence on the issue of use and occupancy.

The Commission's decision in the Cochiti case (Dkt. 136) referred to above decided this question.

Since the Isleta did not have any rights in the Bosque Tract at the time of the 1848 treaty, it is elementary that there could be no recovery in the second cause of action because it is based upon the loss of their alleged rights in such land caused by the unfair and dishonorable dealings of the United States (Pet. Brief pp. 33-36). It also makes immaterial such matters as the failure of the Pueblo Lands Board to report on the controversy relating to the Bosque Tract (p. 33), the failure of the United States to represent the Isleta before the Court of Private Land Claims and Supreme Court (p. 34), the failure of the United States Attorney General to file a bill of complaint after Land Board action (Reply Brief, p. 42), or the allowing of the fencing of the north boundary of the tract (p. 41).

It is our conclusion, therefore, that the petitioner's second cause of action is not sustained by the evidence.

We, accordingly, hold that the petition of the Pueblo de Isleta should be dismissed.
It will be so ordered.

LOUIS J. O'MARR
Associate Commissioner

We concur:

EDGAR E. WITT
Chief Commissioner

WM. M. HOLT
Associate Commissioner

Before The Indian Claims Commission

PUEBLO DE ISLETA,	)	
PETITIONER,	)	
v.	)	Docket No. 211
THE UNITED STATES OF AMERICA,	)	
DEFENDANT.	)	

FINAL ORDER

Upon the findings of fact this day filed herein, which are hereby made a part of this Order, and for the reasons set forth in the opinion also this day filed herein, the Commission concludes as a matter of law that the petitioner, Pueblo de Isleta, has not sustained the allegation of its petition and has not offered evidence entitling it to recover against defendant and, therefore, that the petition in the above entitled cause should be dismissed.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Commission that the petition filed in the above entitled cause on August 7, 1951, be, and the same is hereby dismissed.

DATED at Washington, D. C., this 5th day of June, 1959.

EDGAR E. WITT
Chief Commissioner

LOUIS L. O'MARR
Associate Comissioner

WM. M. HOLT
Associate Comissioner

Before The Indian Claims Commission

PUEBLO DE ISLETA,	)	
PETITIONER,	)	
vs.	)	Docket No. 211
THE UNITED STATES OF AMERICA,	)	
DEFENDANT.	)	

Decided: June 5, 1959

FINDINGS OF FACT

The Commission makes the following Findings of Fact:

Finding 1.

ThePueblo de Isleta, petitioner herein, is a tribe of Pueblo Indians recognized by the Secretary of the Interior, having a regularly elected Governor and council to represent it and authorized under the laws of New Mexico to sue and be sued as a corporation. Petitioner now is and for centuries has been an autonomous Indian community, and is an identifiable group of American Indians entitled to sue under the Indian Claims Commission Act of August 13, 1946.

Finding 2.

The land involved in petitioner's first cause of action is known as the Peralta tract and contains 14,710.85 acres, more or less (Pet. Ex. C). This tract is a part of a Spanish land grant known as the Lo de Padilla Grant containing 51,940.82 acres, more or less, made on May 14, 1718 (Pet. Ex. 5).

Finding 3.

The land involved in petitioner's second cause of action is known as the Bosque de los Pinos and contains 2,582.78 acres, more or less. This tract is a part of the original Spanish land grants known as the Antonio Gutierrez and Joaquin Sedillo Grants aggregating 22,636.92 acres, more or less (Pet. Ex. 6), made on November 5, 1716, and some time prior to 1734, respectively.

Finding 4.

For almost 300 years prior to 1821, Spain exercised sovereignty over Mexico, one of its colonies in the New World. New Mexico was then one of the internal provinces of Mexico, often referred to as New Spain. Mexico revolted against Spain and became independent in 1821.

Finding 5.

The Spanish Government allowed the Indians of New Spain to occupy and use so much of the Crown lands as they could use and protected the occupants against trespasses until the Crown might desire to terminate the same. This policy of the Spanish Government was shown by the Recopilacion de las Indias. The possession and use of the Crown lands by the Indians was at the will of that government. Spain apparently made grants of Crown lands to Indians and non-Indians without regard to the rights of Indians occupying the same.

Finding 6.

Land grants were made by Spanish authorities in the New World to Indian pueblos as well as to non-Indians. As early as May 28, 1567, an ordinance by the Viceroy of the Province of New Spain ordered that each of the Indian pueblos

as might need land upon which to live and sow, should have given to them 500 varas, and more should it be necessary, and that from that time forward there should not be granted to any one lands or grounds unless they should be located 1,000 varas away from the pueblos and houses of the Indians. A vara was equivalent to about 33 inches. Numerous revisions were thereafter made in provisions for the extent of pueblos, sometimes measuring from the church in four directions and sometimes from the farthest house of the place, until the accepted size of the Indian pueblos of New Mexico became four square leagues, or approximately 17,000 acres. A 1924 House of Representatives Committee on Indian Affairs Report states that there were 20 Indian pueblos of New Mexico with a total population of between 6,500 and 8,000, each pueblo consisting of about 17,000 acres of land or a total of 340,000 acres in all.

Finding 7.

The period of Mexican control over New Mexico comparatively short when compared with the era of Spanish rule over this territory. The Plan of Iguala, adopted by the revolutionary government of Mexico February 24, 1821, while New Spain was theoretically a part of Span, declared that "all the inhabitants of New Spain without distinction, whether Europeans, Africans, or Indians, are citizens of this monarchy, with the right to be employed in any post according to their merit and virtues and that the person and property of every citizen will be respected by the government." These principles were recognized in the Treaty of Cordova between Spain and Mexico August 24, 1821, and in the Mexican declaration of independence September 28, 1821.

The Government of Mexico assumed ownership of all lands formerly held by the Spanish Crown. Grants of land made by Spain were recognized by Mexico. No change in private property rights occurred as a result of the change in sovereignty from Spain to Mexico. Laws and decrees promulgated by the Spanish Government were regarded by Mexico as continuing in force, except where specifically changed by the new government.

Finding 8.

On May 13, 1846 war was declared between the United States and Mexico. On August 18, 1846 General Stephen W. Kearny entered Santa Fe and took possession of all of New Mexico in the name of the United States. On February 2, 1848 the Treaty of Guadalupe Hidalgo was signed, ratifications exchanged May 30, 1848, and the treaty proclaimed July 4, 1848.

The United States acquired sovereignty over New Mexico by virtue of the Treaty of Guadalupe Hidalgo in 1848. Under the provisions of Articles VIII and IX of that treaty the United States agreed to respect and protect all property rights within the ceded area (9 Stat. 929-930). Thus, it became the duty of Congress to recognize and establish every title and right to property which before the cession Mexico recognized as good and valid. In other words, in harmony with the rules of international law, as well as with the terms of the treaty of cession, the change of sovereignty should work no change in respect to rights and title; that which was good before should be good after the cession; and that which the law would enforce before should be enforcible after the cession.

Finding 9.

In order to carry out its obligations under the provisions of Articles VIII and IX of the Treaty of Guadalupe Hidalgo, and to ascertain what lands in New Mexico were private property, the title to which should be respected and protected, the Congress of the United States passed the Act of July 22, 1854 (10 Stat. 308), entitled, "An Act to Establish the Office of Surveyor General of New Mexico, *** and for other purposes." By the act, Congress provided for the appointment of a Surveyor General for New Mexico Territory, who should ascertain the origin, nature, character, and extent of all claims to lands within such Territory which might have existed under the laws, usages and customs of Spain and Mexico. A full report of his findings was to be submitted to the Congress on all such claims as originated before the cession of the Territory to the United States with his decision as to the validity or invalidity of the same under the laws, usages and customs of the country before such cession; and also a report in regard to all existing pueblos in the Territory, showing the extent and locality of each, the number of inhabitants in each pueblo, and the nature of their titles to the land. Under the provisions of Section 8 of the Act, this report was to be submitted to Congress for such action as might be deemed just and proper with a view to confirm all bona fide grants and thus give full effect to the Treaty of Guadalupe Hidalgo.

Finding 10.

In accordance with the provisions of the Act of July 22, 1854, this petitioner presented its claim to land to the Surveyor General. The claim presented, however, was not for

the two tracts of land here in issue but rather for the tract known as the Isleta Pueblo Grant. Petitioner's claim was investigated by the Surveyor General and approved by Congress by the Act of December 22, 1858(11 Stat. 374). On November 1, 1864 a patent was issued to petitioner for the Isleta Pueblo Grant containing 110,080.31 acres, more or less (Def. Ex. 10). This tract lies immediately north of the Bosque de los Pinos and the Lo de Padilla Grant.

Finding 11.

It was not until the Act of March 3, 1891 (26 Stat. 854) establishing the Court of Private Land Claims, that Congress provided a judicial tribunal for the adjustment and confirmation of claims under grants from the governments of Spain and Mexico of land in New Mexico and certain other territories included within the Mexican cessions of 1848 and 1853. Prior to that Act, Congress reserved to itself the determination of such claims.

The Court of Private Land Claims began work in Denver, Colorado, July 1, 1891, but soon transferred its seat of operations to Santa Fe, New Mexico. It was not until June 30, 1904, that all the cases brought before the Court were completed.

FIRST CAUSE OF ACTION

Finding 12.

The Peralta Tract is in the southwestern part of the Lo de Padilla Grant and lies entirely within said grant. This grant was made to Diego de Padilla May 14, 1718, by the Spanish Governor and Captain General of the Province of New Mexico, which was then under sovereignty of Spain, and the grantee immediately placed in possession of said

lands. On February 4, 1750, the legal heirs of Diego de Padilla deeded and conveyed to the Pueblo de Isleta all their right, title and interest in said lands.

Finding 13.

On or about January 27, 1896, a petition was filed in the United States Court of Private Land Claims, entitled The Pueblo of Isleta vs. The United States of America, et al., No. 273, seeking confirmation of the Lo de Padilla Grant. On November 28, 1896, a Decree (Def. Ex. 2) was entered, finding that the petitioners had sufficiently connected themselves with the grantee Diego de Padilla and his lawful heirs to entitle them to have the Court approve the validity of said grant, and that said grant was a perfect grant. The Court thus decreed:

> It is therefore on this the 28th day of November, A.D. 1896, hereby ordered, adjudged and decreed by this Court, that the title and claim in and to said lands and real estate within the boundaries herein set forth in a good, legal and valid title, and claim to said land under the Treaty between the United States and the Republic of Mexico, known as the Treaty of Guadalupe Hidalgo, and under the laws ordinances usages and customs of Spain and of its successor in sovereignty, the Republic of Mexico; and that the title to the said tract of land as described in the Grant and juridical possession, with the boundaries aforesaid, be, and the same is hereby established and confirmed forever to the heirs assigns and legal representatives of Diego de Padilla, free and discharged from any and all claims and demands for or against the same on the part of the United States; and

the confirmation or allowance of said claim shall not confer any right or title to any gold, silver, or quicksilver mines, or minerals of the same; but all such mines and minerals shall remain the property of the United States.

It is declared by the Court that the confirmation in this decree contained is made under Title XII., of Book IV., of the Recopilacion de Leyes de Los Reynos de Las Indias, the Royal Decree of the King of Spain of October 15th, 1754, and the law of nations.

Finding 14.

Based upon this determination, a patent (Def. Ex. 1) was issued April 9, 1908, providing as follows:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAVE GIVEN AND GRANTED, and by these presents DO GIVE AND GRANT, unto the said HEIRS, ASSIGNS AND LEGAL REPRESENTATIVES of DIEGO de PADILLA and to their heirs, the lands above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said Heirs, Assigns and Legal Representatives of Diego de Padilla, and to their heirs and assigns forever; Provided, That this grant shall not confer any right or title to any gold, silver, or quicksilver mines or minerals of the same; but all such mines and minerals shall remain the property of the United States with the right of working the same; and that the said grant is made sub-

ject to all the limitations and terms of the said Act of Congress of March 3, 1891.

This patent to the Lo de Padilla Grant was, in effect, a quitclaim deed from the United States and did not affect any other private rights to such land.

Finding 15.

On May 15, 1797, the Pueblo of Isleta sold and conveyed a portion of the Lo de Padilla Grant to Manuel Aragon and twelve other Spanish settlers. Because of the uncertainty of the boundary locations, a continuous controversy ensued between the Indians and non-Indian settlers for many years.

The non-Indians claiming under the 1797 conveyance brought an action to quiet title, entitled Federico Sanchez, et al vs. Pueblo de Isleta, No. 1715 in the Valencia County District Court. On or about February 3, 1915, the Court entered the following decree (Def. Ex. 3):

> This Cause having been heretofore argued and submitted to the court with leave to the respective parties to submit written briefs, and counsel for plaintiffs having long since submitted such brief to the court while counsel for the defendant has failed and neglected to present any such brief on behalf of defendant, the court being now sufficiently advised in the premises, announces its decision in favor of the said plaintiffs and against the said defendant and, as required by the statute in such case made and provided, makes the following findings of fact:
>
> 1. That in the year 1718, Diego de Padilla petitioned the Governor and Captain General of the kingdom and province of New Mexico, for a grant of land de-

cribed as bounded on the east by the Sandia mountains, on the north by the lands of Pueblo de Isleta, on the west by the river bed of the Rio Del Norte, and on the south by the lands of Valencia, which grant was made to the said Diego de Padilla by the then Governor and Captain General of the kingdom and province of New Mexico, and on the 14th day of May, 1718, the said Diego de Padilla was placed in possession of said tract by Captain Alonzo Garcia, Elcalde Mayor of the purisdiction of Isleta.

2. That on the 4th day of February, 1750, the legal heirs of said Diego de Padilla, deeded and conveyed by lawful conveyance, and for a valuable consideration to the Pueblo of Isleta, all their right, title and interest in and to said tract.

3. That on the 15th day of May 1797, Manuel Aragon, Manuel Antonio Aragon, Domingo Chavez, Vincente Chavez, Juan Aragon, Francisco Javier Aragon, Jacinto Sanchez, Felipe Montoya, Simon Sedillo, Francisco Garcia, Jose Ignacio Molina, Lorenzo Romero and Francisco Aragon purchased from the said Pueblo of Isleta and the said Pueblo of Isleta conveyed to the said persons, a portion of the said grant made as aforesaid to Diego de Padilla, and by his heirs conveyed to said Pueblo of Isleta, which portion so purchased by said above named persons is bounded on the north by lands of the defendant, on the south by lands of Los Lentes or Peraltas, on the east by the mountain, and on the west by the Rio Grande del Norte, measuring from south to north 2425½ varas.

4. That the said purchasers of said portion of said grant to Diego de Padilla entered into possession of the same, and they and their descendants and assigns have remained in continuous possession thereof without any interference from anyone until just before the beginning of this suit, and that the plaintiffs herein and those whom they represent and for whom they act, are descendants and assigns of said original purchasers under the deed of May 15, 1797.

5. That on the 27th day of January, 1896, the said defendant filed a petition in the court of private land claims praying for the confirmation to it and its successors forever of the said grant of land made to Diego de Padilla, as the legal representative of the said original grantee, and on the 28th day of November, 1896, by a final decree of said court of private land claims, the said grant of land was established and confirmed forever to the heirs, assigns and legal representatives of said Diego de Padilla, free and discharged from any and all things and demands for or against the same on the part of the United States.

6. That shortly before the beginning of this suit, the defendant, or some of its members, pretending to represent it, made some attempts to interfere with the possession by plaintiffs and those whom they represent, of a portion of the land purchased by their predecessors in title from the defendant on May 15, 1797, and that prior to that time, no such attempt had ever been made or any claim of title to said land ever set up by or for said defendant.

Based upon the foregoing findings of fact, the court makes the following conclusions of law.

That the confirmation by decree of the court of private land claims inured to the benefit of the said plaintiffs and those whom they represent quite as fully as to the benefit of the defendant as they were as hereinbefore found, as matter of fact descendants or assigns of the persons who purchased the lands in question in this case from the defendant on May 15, 1797.

That the title to the land described in the complaint herein is fully and completely vested in the said plaintiffs and those whom they represent and they are entitled to the relief prayed in said complaint.

It is, therefore, ordered, adjudged and decreed by the court that the estate of the said plaintiffs and of those whom they represent, the descendants or successors in title and interest of the said Manuel Aragon, Manuel Antonio Aragon, Domingo Chavez, Vincente Chavez, Juan Aragon, Francisco Javier Aragon, Jacinto Sanchez, Felipe Montoya, Simon Sedillo, Francisco Garcia, Jose Ignacio Molina, Lorenzo Romero and Francisco Aragon, who made the purchase hereinbefore mentioned from the defendant on May 15, 1797, in the said tract of land so purchased by said persons at that time, which is bounded on the north by lands of the defendant, on the south by lands of Los Lentes or Peraltas, on the east by the mountain and on the west by the Rio Grande del Norte, which measures from south to north 2425½ varas, be and the same hereby is established against any and all adverse claims of defendant or of any person or

persons claiming under, by or through defendant and that defendant be and it hereby is barred and forever estopped from having or claiming any right or title to said premises adverse to the plaintiffs and those whom they represent, and that the title of plaintiffs and those whom they represent thereto be and the same hereby is forever quieted and set at rst.

It is furthr ordered that the plaintiffs do have and recover from the defendant their costs in this behalf expended, and that they have execution therefor.

The Pueblo was not represented in this action by the United States or an atorney employed by the United States.

Finding 16.

The controversy involving the Peralta lands was finally submitted to the Pueblo Lands Board. By Act of June 7, 1924 (43 Stat. 636) Congress provided for the creation of the Board in an effort to provide for the final adjudication and settlement of a very complicated and difficult series of conflicting titles affecting lands claimed by the Pueblo Indians of New Mexico. It consisted of three members, one representing the Secretary of Interior, another the Attorney General of the United States, and a third appointed by the President of the United States.

Under the provisions of the Act, the Pueblo Lands Board was directed to investigate, determine and report upon all lands within the exterior boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico under authority of the United States or of any prior sovereignty, or acquired by said Indians as a community by purchase, or otherwise, title to which the "board shall find not to have

been extinguished in accordance with the provisions of this Act."

Under the provisions of Section 6, the Board was also required to investigate and determine what lands or water rights of the Pueblo had been lost. If such loss occurred as a result of the failure of the United States seasonably to prosecute the rights of the Pueblo, the United States was to be held liable therefor and an award made to the Pueblo to compensate it for such loss. Any award of compensation was subject to judicial review by the United States District Court and the Circuit Court of Appeals.

Section 2 provided that one copy of the reports of the Pueblo Lands Board had to be filed with the United States District Court for the District of New Mexico. Section 3 required the United States Attorney General, upon the filing of each report, to forthwith cause to be filed in the District Court a suit to quiet title to the lands described in said report as Indian lands the Indian title to which had been determined by said report not to have been extinguished.

Section 4 protected the right of Pueblo Indians of New Mexico to assert their title to any land in any court of competent jurisdiction at any time prior to the filing of field notes and plats by the Secretary of the Interior as provided in Section 13.

Finding 17.

On August 17, 1928 the Pueblo Lands Board issued two reports on the Isleta Pueblo: Report #1 on title to lands granted or confirmed to the Pueblo Indians not extinguished (Def. Ex. 7), and Report #2 concerning Indians titles ex-

tinguished (Def. Ex. 8). In Report #2 (pp. 5-7) the Board deals with the Peralta Tract as follows:

> The Lo de Padilla Grant, originally made to Diego Padilla on May 14, 1718, was purchased by the Pueblo of Isleta on February 4, 1750, from the heirs of said Padilla and patented to the said Pueblo on April 9, 1908. Said grant so patented contains 51,940.82 acres. All of the land included in this grant was conveyed to the Pueblo of Isleta in 1750 by the heirs of Diego Padilla. The grant appears to have been confirmed by the Court of Private Land Claims on November 2, 1896. However, on February 3, 1915, there was handed down a decision by the Judge of the District Court for the County of Valencia in a case known as Federico Sanchez, et al. vs. the Pueblo of Isleta. It appears that in 1797 ten natives, presumably the descendonts of the original grantees, purchased back from the Pueblo Indians part of the grant. The decree states that the descendants of these purchasers entered into possession and retained possession until just before the beginning of the suit. The description of the area in the decree however, which is was alleged was at that time so deeded to the Indians, is not such as to enable either the Indians or the non-Indians to definitely identify the tract, and this has resulted in continuous contriversy between the interested parties as to their respective rights in the area referred to. At the town of Peralta a considerable settlement is situated near the river, toward the eastern end of the tract so deeded, and the Indians have never claimed pos-

session of or any title to the area within and surrounding this town.

The situation resulted in negotiations between the people Peralta and the heirs of the original Spanish grantee on the one hand, and the Isleta Indians through their duly appointed representatives on the order, looking toward an agreement whereby a fair division of the Lo de Padilla area could be arrived at. After a good deal of negotiation, an understanding was reached whereby 14,710.85 acres, comprising the Peralta settlement and adjacent lands were segregated from the Lo de Padilla Grant, and to the satisfaction of the Indians and non-Indians alike, set aside by the Board as the area to which the Peralta people are entitled. The Board therefore finds (see Report No. 1) that of the 51,940.82 acres patented as the Lo de Padilla Grant, the Indians are now entitled to 37,229.97 acres and the non-Indians to 14,710.85 acres.

The Board finds as to this 14,710.85 acres known as the Peralta tract, that it could not have been recovered by the United States by seasonable prosecution as defined in the Act, and that therefore the Isleta Indians are entitled to no compensation for the loss thereof.

Another document of the Lands Board appears in the record, a Memorandum dated June 30, 1931 (Def. Ex. 19). It covers the various areas found to have been extinguished, upon which no award was recommended to the Indians. The Board said that obviously the Government could not have recovered these lands by seasonable prosecution because title had become perfect and complete in the non-Indians prior

to the Treaty of February 2, 1848. Such an area was at Isleta. The Isleta case, however, is said to be different from the rest. "Here a voluntary agreement was arrived at between the parties. Deeds covering the compromise were exchanged with the approval of the Secretary of the Interior". Details are given similar to the findings in Report #2, with the addition of certain testimony showing that the Isleta approved the settlement. Joe Padilla, governor of the pueblo, is quoted as testifying that it was a fair deal and was agreed to by the council. Pablo Abeita, Antonio Abeyta, a member of the council, and Jose Carpio, also a member, agreed to Governor Hagerman's statement as to the exact area to be included in the transaction. Hagerman was a member of the Board.

Finding 18.

The Exchange Quitclaim deed dated the 1st day of May, 1927, is set out in the Petition as Exhibit C. The instrument expresses the desire of the parties to amicably settle and dispose of for all time the controversies between the parties as to where within the Lo de Padilla grant the 2425½ varas of land claimed by the non-Indians under the Valencia County District Court decree lies. There the Pueblo of Isleta quitclaimed to the non-Indians all their right, title and interest in and to 14,710.85 acres as described by meets and bounds therein, and the non-Indians quitclaimed to the Isleta all their right, title and interest in and to the remainder of the Lo de Padilla grant.

The signatures include that of Walter C. Cochrane as a witness. He was the special Pueblo attorney employed and paid by the United States. He represented the Isleta before

the Lands Board and in the negotiation of the settlement by Exchange Deed.

While the deed states that the Pueblo of Isleta was "acting through its governor and council by and with consent of the Secretary of Interior of the United States ofAmerica", it does not appear that the deed was formally submitted to the Secretary for approval. The original deed was lost. The Secretary of Interior, by letter of December 10, 1931 to the Honorable Dennis Chavez (Appendix D, Def. Brief pp. 116-117), advised that an examination of the files disclosed no record of the receipt of the deed, and said further:

> From the context of the letter (from Mr. Chavez concerning the mutual exchange deed), it appears that the deed was one executed in the settlement of claims by the Pueblo Lands Board, and does not require submission to the Secretary of the Interior for approval.

Finding 19.

The Pueblo Lands Board operated for about eight years from a date shortly after the enactment of the Act in June 1924 to the beginning of the fiscal year of 1933 (Def. Ex. 15).

Beginning December 27, 1930, the Pueblos indicated some dissatisfaction with the findings of the Board and issued challenges directed against the actions of the Board. These challenges took the form of independent suits in ejectment against the white claimants of Pueblo lands and were brought under authority of Sec. 4 of the Pueblo Lands Act. The effect of these suits, or at least their prosecution to final judgment, was tantamount to rejection by the Pueblos of the settlement contemplated by the 1924 Act. Congress and the Secretary of the Interior became concerned by the threat

of this litigation which promised to bring about a situation identical with that which had existed prior to the enactment of the 1924 Act.

At this stage of the controversy investigations were commenced by the Subcommittee on Indian Investigation of the Senate Indian Affairs Committee. These investigations were carried on in Washington and New Mexico and culminated in a report filed by the Committee January 6, 1932 (Def. Ex. 13) recommending supplemental legislation to compensate the Indians and effectuate the purposes of the 1924 Act. Thus Sec. 2 of the proposed bill authorized that there be appropriated to the several Pueblos therein named an increase in compensation over and above that awarded by the Pueblo Lands Board. This, it was hoped, would bring to an end the most troublesome and ancient of land controversies affecting Indian lands under the jurisdiction of the United States. It would conserve the effect of the work done from 1925 to 1932 at a cost of several hundred thousand dollars by the Pueblo Lands Board, the Department of the Interior, and the Department of Justice. Prompt and favorable consideration of the bill was recommended by the Secretary of the Interior (Def. Ex. 15, p. 18). It was enacted into law May 31, 1933 (48 Stat. 108), and provided for an appropriation to the Pueblo de Isleta of $47,751.31 as conpensation over and above that originally awarded by the Pueblo Lands Board.

Finding 20.

Before the Senate Subcommittee, the Pueblo of Isleta was represented by private counsel Judge Richard H. Hanna. The Subcommittee investigated and held hearings on the Pueblo

Lands Boards proceedings as to the Isleta, including the Peralta settlement.

The record of the hearings indicates that Pablo Abeita, Secretary of the Isleta Council in 1931, had no complaint to make about the fairness of the Peralta settlement negotiated between the Indians and settlers in 1928 (Def. Ex. 12, p. 10074); that Charles H. Jennings, a member of the Pueblo Lands Board, felt that the settlement was satisfactory to the Indians (p. 10098) and that the Board considered it fair, too (p. 10096); that Louis H. Warner, chairman of the Board, testified that the officers of the Pueblo came before the Board and expressed satisfaction with the settlement (p. 10096), and that he, too, as well as the other Board members, thought that the Indians "got a very good trade" (p. 10098); that Walter C. Cochrane, the Special Attorney employed by the Government to protect the interests of the Indians, was of the opinion that the setlement was "quite fair" (p. 10096); and in the testimony of Judge Richard H. Hanna, he would not say that the settlement was unfair, but did believe that the Indians should have been awarded some compensation in the matter (p. 10097).

Further evidence submitted to the Investigating Committee at the hearing in Washington included (1) a certified copy of the exchange quitclaim deed dated May 1, 1928 (Def. Ex. 12a, pp. 11155 and 11168-11170), which is the same deed now before this Commission; (2) a statement of the Pueblo interpreter and the Governor of the Pueblo and two members of the Pueblo Council at the time the deed was executed, indicating that it was executed upon the advice of H. J. Hagerman, the members of the Pueblo Lands Board re-

presenting the Secretary of the Interior, and other Indian Bureau officials "to eliminate a lot of litigation" (pp. 11155 and 11163-11164); (3) an affidavit of Diego Abeita intended to show a value of at least $10.00 per acre for land in the "Isleta tract" (pp. 11156 and pp. 11159-11161); (4) a very lengthy statement by Judge Hanna specifically requesting that petitioner be awarded compensation at the rate of $2.00 per acre for loss of the Peralta tract (pp. 11155-11158); (5) and finally a written statement by H. J. Hagerman regarding the Lo de Padilla Grant and Peralta settlement (pp. 11164-11167).

Finding 21.

In reports of March 16, 1932 (Def. Ex. 14, p. 5) and of May 10, 1933 (Def. Ex. 15, p. 4), the House of Representatives Committee on Indian Affairs stated:

> With respect to the figure included in section 2 of the proposed bill (H. R. 4014) for the pueblo of Isleta, in addition to the amount which constitutes the difference between the amount of the award and the appraised value of the tracts of land involved, which is the sum of $2,444.71, there is included further compensation in the amount of $29,421.70 for 14,710.85 acres on the basis of $2 per acre. The Board made no award for this tract, apparently holding in error that it could not have been recovered for the Indians. The Board held, however, as to two small tracts in the same area that recovery could have been made by the Government, and awarded $2 an acre for these tracts. The necessity for compensation to justify the divesting of title requires the extending of the compensation at $2 per acre

to include all of the acreage within this area, for which reason the committee approves the increase of award for this pueblo for this particular tract of land.

Thereafter, the amount of $29,421.70 was included in the appropriation made by Congress as set out in Finding 19 and was received by the Pueblo of Isleta, as acknowledged by the petitioner herein.

Finding 22.

Some of the evidence introduced by the petitioner in this docket is the same as that before the Congressional Committees. In addition, Antonio Abeita, Secretary and interpreter for the Pueblo de Isletā in 1928 when the Peralta dispute was settled, testified before this Commission in Albuquerque, September 10, 1954 and in Santa Fe, December 4, 1956, regarding the execution of the exchange quitclaim deed involving the Peralta tract. His testimony indicates that the deed in question was signed willingly by the Indians, and that he interpreted for them the meaning of such document to the best of his ability. He further testified that nothing was said about compensating the Indians but that the Indians expected compensation for the lands they were quitclaiming. Diego Abeyta testified in both proceedings.

Finding 23.

In 1949 the defendant transferred title to three tracts of land to the United States in trust for the Pueblo of Isleta, said lands aggregating 17,492.71 acres, one of which tracts included most of the Peralta tract in the amount of 11,142.39 acres (Def. Ex. 16, pp. 9-10; 63 Stat. 604). This land had been acquired by the United States by purchase in the 1930's as a part of a submarginal land acquisition project.

Finding 24.

The Comission finds that the defendant's actions regarding the Peralta tract and the Pueblo of Isleta were not less than fair and honorable; that the Peralta settlement was fairly negotiated before the Pueblo Lands Board and was of benefit to all parties; and that the Exchange Quitclaim Deed was sufficient in form and execution to accomplish the settlement, was made for a mutual consideration, and did not require the subsequent formal approval of the Secretary of the Interior.

SECOND CAUSE OF ACTION

Finding 25.

West of the Lo de Padilla Grant lie two contiguous tracts of land comprising the Antonio Gutierrez and Joaquin Sedillo Grants. Within the exterior boundaries of these grants lies the Bosque de los Pinos containing 2,582.78 acres, more or less (Pet. Ex. 6). The east boundary of the Bosque tract is the old bed of the Rio Grande River and the westboundary is the river bedafter the river changed its course.

Finding 26.

On or about September 9, 1896 two petitions (Def. Ex. 18, p. 1) were filed in the Court of Private Land Claims by J. Francisco Chavez against the United States, seeking confirmation of the Antonio Gutierrez and Joaquin Sedillo Grants. On or about November 13, 1896 petitions (p. 5) were filed in the same dockets by the Pueblo de Isleta through their attorney G. L. Solignac praying that it be allowed to join in said causes as a co-petitioner with the said J. Francisco Chavez; that it adopted as its own, all of the allegations of the Chavez petition; and joined in the prayer for a confirma-

tion of the Gutierrez-Sedillo Grant therein described.

In the proceedings before the Court of Private Land Claims Chavez did not claim title to the entire Gutierrez-Sedillo Grant but only to the Bosque de los Pinos; all of the evidence presented by him clearly showed that only the Bosque tract was claimed (p. 8).

Neither did the Pueblo de Isleta at that time make claim to the Bosque de los Pinos. Its claim was to all the lands within the Gutierrez-Sedillo Grant west of the Rio Grande as its channel then flowed. This excluded the Bosque de los Pinos which lay east of the river between the old and new channels. There was no dispute about this claim by the Pueblo since all parties stipulated (p. 10) "that the Pueblo of Isleta has had open and notorious possession and use of lands on the west side of the Rio Grande *** as far back as the memory of the oldest man living within the pueblo can extend, and that such possession and use have been claimed to be under the purchase from the heirs of Clemente Gutierrez, of which some documentary evidence has been presented in the paper *** dated May 3, 1808," (p. 27) and other papers (pp. 27-30) presented by the officers of the Pueblo.

On June 2, 1897 the court entered a decree, after a formal hearing and other proofs (pp. 6-35) had been taken in open court on behalf of both petitioners and after counsel had been heard on behalf of defendant and petitioners. The court found (pp. 35-37):

> 1. That on November 5, 1716 the Spanish Governor of New Mexico granted to Antonio Gutierrez a tract of land bounded on the north by an arroyo with some cottonwood trees that comes down from the hills, on the

south by the Pueblo of San Clemente, on the east by the Rio del Norte, and on the west by the hills of the Puerco River.

2. That some time prior to 1734 a grant was made to Joaquin Sedillo, who had also acquired some additional land, the whole tract being bounded on the north by the Pueblo de Isleta lands, on the south by the northern boundary of the aforesaid Gutierrez Grant, on the east by the Rio del Norte and on the west by the ceja of the Rio Puerco.

3. That in 1785 Clemente Gutierrez died in possession and owning both of the above tracts.

4. That some time prior to May 3, 1808 the Pueblo de Isleta acquired the title of Clemente Gutierrez to all of the above lands lying west of the present river bed of the Rio Grande del Norte, and had entered into possession of the same and has held such possession down to the present time.

5. That by a number of deeds from the children and heirs of Clemente Gutierrez, beginning in 1819, Francisco Xavier Chavez acquired all of the Gutierrez title to the above lands east of the present river bed of the Rio Grande del Norte, which tract is known as the Bosque de los Pinos.

6. That after the making of the original grants the Rio Grande formed a new channel (its present channel) west of its original channel and that the lands between the old and new channels have since become known as the Bosque de los Pinos, acquired by Francisco Xavier Chavez.

The court, therefore, entered its decree in which it confirmed title in the Bosque de los Pinos tract to J. Francisco Chavez and title in the remainder of the Gutierrez-Sedillo Grant, namely, for those lands west of the Bosque tract, in favor of the Pueblo de Isleta.

Finding 27.

Upon appeal by the United States, the determination by the Court of Private Land Claims respecting claims of J. Francisco Chavez and the Pueblo de Isleta to lands within the Gutierrez-Sedillo Grant was affirmed by the United States Supreme Court (United States v. Chavez, 175 U.S. 509, 525). The appellees were represented by Frank W. Clancy. This decree, however, did not affect any private rights or conflicting claims of such parties between themselves. The proceeding in the Court of Private Land Claims was not litigation between conflicting private interests; it was an action "against the United States, and determinative only of the title against the United States." Any conflicing claims beween Chavez and the Pueblo de Isleta had to be submitted to the courts of general jurisdiction. The Court of Private Land Claims had no authority to determine or adjudicate conflicting interests in lands between private parties.

The result of the proceedings before the Court of Private Land Claims and Supreme Court, therefore, was that as against any claim of the United States to the lands within the Gutierrez-Sedillo Grant, the claim of the Pueblo de Isleta was confirmed to all lands *except* the Bosque de los Pinos; and the title to the Bosque de los Pinos was confirmed in J. Francisco Chavez. Such a determination, said the Supreme

Court, was clearly within the jurisdiction of the Court of Private Land Claims.

On November 15, 1909 a joint patent (Def. Ex. 6) was issued to J. Francisco Chavez and his heirs and to the Pueblo of Isleta for the separate tracts as found and described by the Court of Private Land Claims.

Finding 28.

The Pueblo Lands Board, in its Report #2 (Def. Ex. 8, p. 4½-5), found fifteen tracts aggregating 59.848 acres to have been extinguished within the area of the Gutierrez and Sedillo Grants and made an award therefor. The Board further found that "there does not seem to have been any serious controversies between the Indians and non-Indians in this action".

At the 1931 hearings referred to in Finding 20, Mr. Jennings, a member of the board, considered the confirmation of the Bosque tract to Chavez by the Court of Private Land Claims and the affirmance by the Supreme Court to be res adjudicata and that the board had no authority to go into that matter.

Neither the House (Def. Ex. 14, 15) nor the Senate (Def. Ex. 13) Reports mention the Bosque tract, and Congress never made an award to the Isleta therefor.

Finding 29.

The Commission finds that the Pueblo of Isleta never purchased the Bosque de los Pinos tract; that the area became private property by reason of the 1716 Gutierrez Grant and the Sedillo Grant sometime prior to 1734; and that thereafter, the use of the Bosque tract by the Isleta did not and could not give the Isleta a compensable interest in such land.

EDGAR E. WITT
Chief Commissioner

LOUIS L. O'MARR
Associate Commissioner

WM. M. HOLT
Associate Commissioner

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No. 137

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In the Supreme Court of the United States

OCTOBER TERM, 1961

PUEBLO DE ISLETA, *Petitioner*

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

ARCHIBALD COX,
Solicitor General,

ROGER P. MARQUIS,
HUGH NUGENT,
Attorneys,
Department of Justice,
Washington 25, D. C.

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OPINION BELOW

The opinion of the Indian Claims Commission (Pet. App. 19-53) is reported at 7 Ind. Cl. Comm. 619. The order of the Court of Claims affirming the Indian Claims Commission (Pet. App. 18) is not reported.

JURISDICTION

The order of the Court of Claims affirming the Indian Claims Commission (Pet. App. 18) was entered on March 10, 1961. The petition for a writ of certiorari was filed on June 7, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1) and

Section 20(e) of the Indian Claims Commission Act of August 13, 1946, 60 Stat. 1049, 1054, 25 U.S.C. 70s(e).

QUESTION PRESENTED

Whether the Pueblo Lands Board's negotiation of a settlement of a boundary dispute between Indians and non-Indians by an exchange of quitclaim deeds rather than by litigation constitutes less than fair and honorable dealing by the United States with the Indians within the meaning of the Indian Claims Commission Act.

STATUTES INVOLVED

The relevant portions of the Indian Claims Commission Act of August 13, 1946, 60 Stat. 1049, 25 U.S.C. 70-70v, and of the Pueblo Lands Act of June 7, 1924, 43 Stat. 636, are set forth in the petition at pages 4 to 12.

STATEMENT

The petitioner, the Pueblo de Isleta, brought this suit under Section 2, Clause (5), of the Indian Claims Commission Act, 25 U.S.C. 70a, seeking in separate causes of action compensation for the loss of two tracts of land near Albuquerque, New Mexico, on the ground that these losses were the result of unfair and dishonorable dealings on the part of the United States (Pet. App. 21). The Commission held that the petitioner had failed to sustain its allegations and therefore dismissed the action (Pet. App. 54), and the Court of Claims affirmed without opinion (Pet. App. 18). The petition for certiorari apparently seeks review of only so much of the Commission's judgment as pertains to the Peralta tract, the subject of the first

cause of action, no reference being made to the other tract or cause of action.

The Peralta tract consists of 14,710.85 acres and was part of a Spanish land grant known as the Lo de Padilla Grant, which contained 51,940.82 acres (Fdg. 2, Pet. App. 55). Spain granted this land to Diego de Padilla in 1718, and his heirs sold the entire tract to the Pueblo de Isleta in 1750 (Fdg. 12, Pet. App. 60-61). In 1797, the Pueblo sold the portion of the Lo de Padilla Grant, now known as the Peralta tract, to some Spanish settlers, but, because of uncertainty over boundaries, there was continuous controversy between the Indians and non-Indian settlers for many years (Fdg. 15, Pet. App. 63).

In 1848, the United States acquired sovereignty over New Mexico by virtue of the Treaty of Guadalupe Hidalgo, 9 Stat. 922. In order to carry out its obligations under this Treaty and to ascertain what lands in New Mexico were private property, Congress passed the Act of July 22, 1854, 10 Stat. 308, providing for the appointment of a Surveyor General for New Mexico Territory. He was to ascertain the origin, nature, character, and extent of all land claims in the Territory, and to report his findings, conclusions and recommendations to Congress. The petitioner submitted a claim to the Surveyor General under this Act; it was approved by Congress, Act of December 22, 1858, 11 Stat. 374, and a patent was issued to the petitioner for the Isleta Pueblo Grant in 1864. This Grant did not include the tracts involved in this suit. (Fdgs. 8-10, Pet. App. 58-60).

By the Act of March 3, 1891, 26 Stat. 854, Congress established the Court of Private Land Claims, for the adjustment and confirmation of Spanish and Mexi-

can grants in New Mexico. In 1896, that court confirmed the Lo de Padilla Grant "forever to the heirs assigns and legal representatives of Diego de Padilla, free and discharged from any and all claims and demands for or against the same on the part of the United States * * *." On the basis of this determination, the United States in 1908 issued a patent to the Lo de Padilla Grant, but this patent was no more than a quitclaim deed from the United States not affecting any private rights in the land. (Fdgs. 11, 13, 14, Pet. App. 60, 61-63.)

The non-Indians claiming title under the 1797 conveyance of the Peralta tract brought a suit to quiet title in the State District Court, and in 1915 that Court issued a decree in favor of the non-Indians (Fdg. 15, Pet. App. 63-67). But the description of the area in that decree was apparently not specific enough to end the dispute, because there was still a controversy when the Pueblo Lands Board was established in 1924. The dispute over the Peralta tract was but one of many over Pueblo land, there being in 1924 some 3,000 claimants to land within the exterior boundaries of the Pueblo grants in New Mexico. H. Rept. 787, 68th Cong., 1st Sess., Cong. Doc. Ser. No. 8229. To settle the complicated questions of title and to secure for the Indians all of the lands to which they were equitably entitled, or fair compensation for any lands lost because of a failure by the United States seasonably to prosecute the rights of the Indians, Congress passed the Pueblo Lands Act of June 7, 1924, 43 Stat. 636, establishing the Pueblo Lands Board. The Board's duties included reporting on Pueblo lands then in the possession of non-Indian claimants. If the Board found that such tracts could

be, or at any time could have been, recovered for the Indians by the United States by seasonable prosecution, the United States was made liable for such loss and the Board was to determine the amount of loss and award compensation.

The Pueblo Lands Board investigated the Peralta tract controversy and encouraged its settlement by negotiation rather than litigation. In a report submitted in 1928, the Board stated that the title and boundary questions had been resolved by an exchange of quitclaim deeds between the Indians and non-Indians. An area of 14,710.85 acres was segregated from the Lo de Padilla Grant for the non-Indians, who relinquished their claims to the remaining 37,229.97 acres. The Board specifically found that the 14,710.85 acres known as the Peralta tract could not have been recovered for the Indians by seasonable prosecution of suit by the United States and that the Indians were therefore entitled to no compensation for the tract. A later memorandum of the Board stated that the Government could not have recovered the land by seasonable prosecution because title had passed to the non-Indians prior to the cession of New Mexico to the United States (Fdg. 17, Pet. App. 68-71).

The proceedings of the Pueblo Lands Board were later reviewed by Congress because the Pueblos began to indicate their dissatisfaction with the Board's findings by filing independent ejectment suits against the non-Indian settlers (Fdg. 19, Pet. App. 72-73). Testimony before the Subcommittee on Indian Investigation of the Senate Indian Affairs Committee indicated that the Indians thought that the Peralta settlement was fair, although the petitioner's representative said that the Indians should have been awarded some com-

pensation in the matter (Fdg. 20, Pet. App. 73-75). The House Committee on Indian Affairs reported that the Board had made no award for the Peralta tract, "apparently holding in error that it could not have been recovered for the Indians," and recommended payment of $2.00 an acre, or $29,421.70, for the Peralta tract (Fdg. 21, Pet. App. 75). Such an amount was included in the appropriation of May 31, 1933, 48 Stat. 108.

In 1949, the United States placed three tracts in trust for the petitioner, one of which included most of the Peralta tract. This land had been acquired by the United States in the 1930's as part of a submarginal land acquisition program (Fdg. 23, Pet. App. 76).

The petitioner's present claim is premised on the allegation that the Peralta settlement was the result of less than fair and honorable dealings by the United States. But the Indian Claims Commission found (Fdg. 24, Pet. App. 77):

> The Commission finds that the defendant's actions regarding the Peralta tract and the Pueblo of Isleta were not less than fair and honorable; that the Peralta settlement was fairly negotiated before the Pueblo Lands Board and was of benefit to all parties; and that the Exchange Quitclaim Deed was sufficient in form and execution to accomplish the settlement, was made for a mutual consideration, and did not require the subsequent formal approval of the Secretary of the Interior.

ARGUMENT

The petitioner has attempted in this suit to relitigate issues which were settled by the efforts of the Pueblo Land Board, which was established by Congress to settle once and for all the disputes over the

Pueblo lands. Instead of stopping with the determination that the Pueblo title to the Peralta tract had been extinguished and that the United States had not been responsible for the loss of the tract, the Board set out to end the long standing dispute and constant threat of litigation between the settlers and the Indians by negotiating a settlement. The exchange of quitclaim deeds resulting from the negotiations resolved the Peralta boundary dispute, although the Indians later claimed they should have been paid some compensation for the land. They were given $2.00 an acre by Congress in 1933, but now they seek additional compensation.

The petitioner's suit rests on the allegation that the Peralta settlement was the result of less than fair and honorable dealings by the United States. But that allegation has been explicitly rejected by the Indian Claims Commission in Finding 24 (Pet. App. 77). Insofar as this Finding is a finding of fact, it has been affirmed by the Court of Claims and presents nothing for review by this Court. Insofar as it represents a conclusion of law, it is clearly correct. Settlement of boundary and title disputes was the purpose for which Congress created the Pueblo Lands Board. That the Board accomplished this goal by negotiation rather than litigation is certainly consistent with the Congressional purpose, and, in the absence of a showing of fraud or bad faith, raises no serious legal question.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

ROGER P. MARQUIS,
HUGH NUGENT,
Attorneys.

JULY, 1961

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